

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

and

PUGET SOUND CLEAN AIR AGENCY,

Co-Plaintiff,

v.

U.S. OIL & REFINING CO.,

Defendant

Case No. 3:10-cv-05899

CONSENT DECREE BETWEEN
PLAINTIFF UNITED STATES OF
AMERICA AND DEFENDANT
U.S. OIL & REFINING COMPANY

CONSENT DECREE BETWEEN PLAINTIFF - 1
UNITED STATES OF AMERICA AND
DEFENDANT U.S. OIL & REFINING CO.

United States Department of Justice
Environment & Natural Resources Division
Environmental Enforcement Section
999 18th Street, Suite 370
Denver, Colorado 80202
(303) 844-1381

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CONSENT DECREE

WHEREAS, Plaintiff the United States of America ("United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the United States Environmental Protection Agency ("EPA"), and Co-Plaintiff the Puget Sound Clean Air Agency ("PSCAA" or "Co-Plaintiff") have simultaneously filed a Complaint against defendant U.S. Oil & Refining Co. ("U.S. Oil" or "Defendant") for certain alleged violations at its refinery located in Tacoma, Washington (the "Refinery");

WHEREAS, the United States alleges, upon information and belief, that U.S. Oil has violated and/or continues to violate the following statutory and regulatory provisions (the "Federal Requirements"):

1) Leak Detection and Repair ("LDAR") requirements promulgated pursuant to Sections 111 and 112 of the Clean Air Act ("CAA"), and found at 40 C.F.R. Part 60, Subpart GGG; and 40 C.F.R. Part 63, Subpart CC ("LDAR Regulations"); and

2) National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Benzene Waste Operations promulgated pursuant to Section 112(e) of the CAA, and found at 40 C.F.R. Part 61, Subpart FF ("Benzene Waste Operations NESHAP Regulations");

3) NESHAP for Petroleum Refineries: Catalytic Reforming Units, 40 C.F.R. Part 63, Subpart UUU, promulgated pursuant to Section 112 of the CAA;

WHEREAS, the LDAR allegations in this matter involve failing to record several monitoring events and several first and final attempts at repair; failing to report four leaks in semi-annual reports; failing to equip eight open-ended lines with secondary closure devices; and failing to limit difficult-to-monitor valves to 3% or less in three process units;

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1 WHEREAS, the LDAR allegations do not include a failure to undertake Method 21
2 properly, the Refinery reported an overall leak rate of 0.53% and, in comparative monitoring,
3 EPA found an overall leak rate of 0.41%;

4 WHEREAS, the Benzene Waste Operations NESHAP allegations in this matter involve
5 failing to include all waste streams in the Refinery's calculation of Total Annual Benzene
6 quantity, failing to report a range of benzene concentrations for each uncontrolled waste stream,
7 failing to determine the annual waste quantity in all benzene-containing waste streams at the
8 point of generation, and failing to properly collect one benzene waste sample;

9 WHEREAS, the Puget Sound Clean Air Agency has joined in this matter alleging
10 violations of federal, state and PSCAA regulations and certain terms of U.S. Oil's air operating
11 permit that implement or supplement the foregoing federal requirements (the "PSCAA
12 Requirements");

13 WHEREAS, U.S. Oil denies that it has violated the Federal Requirements, and denies
14 that it has violated the PSCAA Requirements, and maintains that it has been and remains in
15 compliance with all applicable statutes, regulations and permits and is not liable for civil
16 penalties and injunctive relief as alleged in the Complaint;

17 WHEREAS, discussions between the Parties have resulted in the settlement embodied in
18 this Consent Decree lodged with the Court simultaneously with the filing of the Complaint;

19 WHEREAS, U.S. Oil has agreed to undertake four Supplemental Environmental Projects
20 at an estimated out-of-pocket cost of approximately \$746,000 including, during a 2010
21 turnaround, proactively replacing or repacking – without any demonstration of leaks –
22 approximately 170 valves that are cycled frequently and/or are in high temperature or high
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1 pressure applications. Of these valves, the control valves will be upgraded with "live loaded
2 packing," that is, with packing to which a spring load has been applied to the gland follower of
3 the packed valve, and the manual valves will be upgraded or enhanced with state-of-the-art
4 stuffing box packing;

5 WHEREAS, U.S. Oil has waived any applicable federal or state requirements of statutory
6 notice of the alleged violations;

7 WHEREAS, the United States agrees that U.S. Oil need not answer the Complaint;

8 WHEREAS, notwithstanding the foregoing reservations, the Parties agree that: (a)
9 settlement of the matters set forth in the Complaint is in the best interests of the Parties and the
10 public; and (b) entry of the Consent Decree without litigation is the most appropriate means of
11 resolving this matter; and
12

13 WHEREAS, the Parties recognize, and the Court by entering the Consent Decree finds,
14 that the Consent Decree has been negotiated at arms length and in good faith and that the
15 Consent Decree is fair, reasonable, and in the public interest;

16 NOW THEREFORE, with respect to the matters set forth in the Complaint, and in
17 Part XVI of the Consent Decree ("Effect of Settlement"), and before the taking of any testimony,
18 without adjudication of any issue of fact or law, and upon the consent and agreement of the
19 Parties to the Consent Decree, it is hereby ORDERED, ADJUDGED and DECREED as follows:
20

21 **I. JURISDICTION AND VENUE**

22
23 1. This Court has jurisdiction over the subject matter of this action and over the
24 Parties pursuant to 28 U.S.C. §§ 1331, 1345, and 1355. In addition, this Court has jurisdiction
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1 over the subject matter of this action pursuant to Sections 113(b) of the CAA, 42 U.S.C.
2 §§ 7413(b). The United States' Complaint states a claim upon which relief may be granted for
3 injunctive relief and civil penalties against U.S. Oil under the CAA. Authority to bring this suit
4 is vested in the United States Department of Justice by 28 U.S.C. §§ 516 and 519 and Section
5 305 of the CAA, 42 U.S.C. § 7605.

6 2. Venue is proper in the Western District of Washington pursuant to Section 113(b)
7 of the CAA, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a). U.S. Oil
8 consents to the personal jurisdiction of this Court, waives any objections to venue in this District,
9 and does not object to the participation of PSCAA in this action.

10 3. Notice of the commencement of this action has been given to the State of
11 Washington in accordance with Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), and as
12 required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b).

14 **II. APPLICABILITY AND BINDING EFFECT**

15 4. The provisions of this Consent Decree shall apply to the Refinery, and shall be
16 binding upon the United States, PSCAA, and U.S. Oil and its agents, successors, and assigns.

17 5. U.S. Oil agrees not to contest the validity of this Consent Decree in any
18 subsequent proceeding to implement or enforce its terms.

19 6. Effective from the Date of Entry of this Consent Decree until termination
20 pursuant to Part XVIII, U.S. Oil agrees that the Refinery is covered by this Consent Decree.
21 Effective from the Date of Entry of this Consent Decree, U.S. Oil shall give written notice of this
22 Consent Decree to any successors in interest in the Refinery prior to the transfer of ownership or
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1 operation of Refinery, or any portion thereof, and shall provide a copy of this Consent Decree to
2 any successor in interest. U.S. Oil shall notify the United States and PSCAA, in accordance with
3 the notice provisions set forth in Paragraph 153 ("Notice"), of any transfer of ownership or
4 operation at least 30 days prior to any such transfer.

5 7. U.S. Oil shall condition any transfer, in whole or in part, of ownership of,
6 operation of, or other interest (exclusive of any non-controlling, non-operational shareholder or
7 membership interest) in the Refinery, as applicable, upon the execution by the transferee of a
8 modification to this Consent Decree, which makes the terms and conditions of this Consent
9 Decree applicable to the transferee. In the event of such transfer, U.S. Oil shall notify the United
10 States and PSCAA in accordance with the notice provisions in Paragraph 153. By no earlier than
11 30 days after such notice, U.S. Oil may file a motion to modify this Consent Decree with the
12 Court to make the terms and conditions of this Consent Decree applicable to the transferee. U.S.
13 Oil shall be released from the obligations and liabilities of this Consent Decree unless the United
14 States or PSCAA opposes the motion and the Court finds that the transferee does not have the
15 financial and technical ability to assume the obligations and liabilities under this Consent Decree.

16 8. Except as provided in Paragraph 7, U.S. Oil shall be solely responsible for
17 ensuring that performance of the work required under this Consent Decree is undertaken in
18 accordance with the deadlines and requirements contained in this Consent Decree and any
19 attachments hereto. U.S. Oil shall provide a copy of the applicable provisions of this Consent
20 Decree to each consulting or contracting firm that is retained to perform work required under this
21 Consent Decree upon execution of any contract relating to such work. Copies of the relevant
22 portions of this Consent Decree do not need to be supplied to firms who are retained solely to
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1 provide service or labor, or supply materials or equipment to satisfy the requirements of this
2 Consent Decree.

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4 **III. OBJECTIVES**

5 9. It is the purpose of the Parties to this Consent Decree to further the objectives of
6 the CAA.

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8 **IV. DEFINITIONS**

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10 10. Unless otherwise defined herein, terms used in this Consent Decree shall have the
11 meaning given to those terms in the CAA and the implementing regulations promulgated
12 thereunder. The following terms used in this Consent Decree shall be defined, solely for
13 purposes of this Consent Decree and the reports and documents submitted pursuant thereto, as
14 follows:

15 A. "Calendar Quarter" shall mean the three month period ending on March 31st,
16 June 30th, September 30th, and December 31st.

17 B. "Co-Plaintiff" shall mean Puget Sound Clean Air Agency.

18 C. "Consent Decree" or "Decree" shall mean this Consent Decree, including any
19 and all appendices attached to this Consent Decree.

20 D. "Date of Entry" shall mean the date on which this Consent Decree is entered by
21 the United States District Court for the Western District of Washington.

22 E. "Date of Lodging" shall mean the date this Consent Decree is lodged with the
23 United States District Court for the Western District of Washington.
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1 F. "Day" or "Days" shall mean a calendar day or days. "Working Day" shall
2 mean a day other than a Saturday, Sunday or Federal holiday. In computing any period of time
3 under this Consent Decree, where the last day would fall on a Saturday, Sunday or Federal
4 holiday, the period shall run until the close of business on the next working day, except when a
5 specific compliance date is specified in this Consent Decree, compliance must be achieved on or
6 before that date.

7 G. "EPA" or "U.S. EPA" shall mean the United States Environmental Protection
8 Agency and any successor departments or agencies of the United States.

9 H. "The Refinery" and "Refinery" shall mean the refinery owned and operated by U.S.
10 Oil in Tacoma, Washington.

11 I. "Paragraph" shall mean a portion of this Consent Decree identified by an
12 Arabic numeral.

13 J. "Part" shall mean a portion of this Consent Decree identified by a Roman
14 numeral.

15 K. "Parties" shall mean the United States, PSCAA, and U.S. Oil & Refining Co.

16 L. "Section" shall mean a portion of this Consent Decree identified by a capital
17 letter.

18 M. "U.S. Oil" shall mean U.S. Oil & Refining Co.

19 N. "United States" shall mean the United States of America, including the United
20 States Department of Justice and the United States Environmental Protection Agency.

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23 **V. BENZENE WASTE OPERATIONS NESHAP PROGRAM ENHANCEMENTS**

1 Summary: In addition to complying with all applicable requirements of 40 C.F.R. Part 61,
2 Subpart FF ("Benzene Waste Operations NESHAP," "BWON" or "Subpart FF"), U.S. Oil agrees
3 to undertake the measures set forth in this Part to ensure continuing compliance with Subpart FF
4 and to minimize or eliminate benzene waste emissions.

5 Current Status. U.S. Oil currently reports the Total Annual Benzene content (TAB) from wastes
6 at the Refinery is less than 10 megagrams per year ("Mg/yr").

7 11. Refinery Compliance Status Changes. If at any time from the Date of Lodging of
8 the Consent Decree through its termination the Refinery is determined to have a TAB equal to or
9 greater than 10 Mg/yr, U.S. Oil will either: (a) utilize the compliance option set forth at 40
10 C.F.R. § 61.342(e) (hereinafter referred to as the "6 BQ compliance option") in accordance with
11 Paragraphs 16 through 18 of this Consent Decree; or (b) take actions to reduce the TAB in
12 accordance with Paragraph 16 of this Consent Decree.

13 12. One-Time Review and Verification of the Refinery's TAB: Phase One of the
14 Review and Verification Process. By no later than 12 months after the Date of Entry, U.S. Oil
15 will complete a review and verification of the Refinery's TAB. The Phase One review and
16 verification process will include, but need not be limited to:

17 a. an identification of each waste stream that is required to be included in the
18 TAB (e.g., tank water draws, spent caustic, desalter rag layer dumps, desalter vessel process
19 sampling points, streams to the sour water stripper, other sample wastes, maintenance wastes,
20 and turnaround wastes that meet the definition of waste under Subpart FF);
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1 b. a review and identification of the calculations and/or measurements used
2 to determine the flows of each waste stream for the purpose of ensuring the accuracy of the
3 annual waste quantity for each waste stream;

4 c. an identification of the benzene concentration in each waste stream,
5 including sampling for benzene concentration at no less than 10 waste streams consistent with
6 the requirements of 40 C.F.R. § 61.355(c)(1) and (3); provided, however, that previous analytical
7 data or documented knowledge of waste streams may be used in accordance with 40 C.F.R. §
8 61.355(c)(2), for streams not sampled;

9 d. an identification of whether or not each TAB stream is controlled
10 consistent with the requirements of Subpart FF; and

11 e. an identification of each stream sent to the sour water stripper.

12 13. By no later than 90 days after completion of the Phase One review and
13 verification process, U.S. Oil will submit to EPA and PSCAA a Benzene Waste Operations
14 NESHAP Compliance Review and Verification Report ("BWON Compliance Review and
15 Verification Report") that sets forth the results of Phase One, including but not limited to the
16 items identified in Paragraph 12, as well as the schematic required to be prepared under
17 Paragraph 26.

18 14. One-Time Review and Verification of the Refinery's TAB: Phase Two of the
19 Review and Verification Process. Based on EPA's review of the BWON Compliance Review
20 and Verification Reports and after an opportunity for consultation with PSCAA, EPA may select
21 up to five (5) additional waste streams at the Refinery for sampling for benzene concentration.
22 U.S. Oil will conduct the required sampling and submit the results to EPA within ninety (90)
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1 days of receipt of EPA's request. U.S. Oil will use the results of this additional sampling to
2 reevaluate the TAB and the uncontrolled benzene quantity and to amend the BWON Compliance
3 Review and Verification Report, as needed. To the extent that EPA requires U.S. Oil to sample a
4 waste stream as part of the Phase Two review that U.S. Oil sampled and included as part of its
5 Phase One review, U.S. Oil may average the results of such sampling. U.S. Oil will submit an
6 Amended BWON Compliance Review and Verification Report to EPA (with a copy to PSCAA)
7 within one-hundred twenty (120) days following the date of the completion of any required
8 Phase Two sampling. This Amended BWON Compliance Review and Verification Report will
9 supersede and replace the original BWON Compliance Review and Verification Report. In lieu
10 of an Amended BWON Compliance Review and Verification Report, U.S. Oil may elect to
11 submit a supplementary report that identifies all changes or differences identified during the
12 Phase One sampling ("Supplementary BWON Compliance Report"). If U.S. Oil submits a
13 Supplementary BWON Compliance Report, the original BWON Compliance Review and
14 Verification Report plus the Supplementary BWON Compliance Report shall constitute the final
15 report. If Phase Two sampling is not required by EPA, the original BWON Compliance Review
16 and Verification Report will constitute the final report.

18 15. Amended TAB Reports. If the results of the BWON Compliance Review and
19 Verification Report indicate that the Refinery's most recently-filed TAB report does not satisfy
20 the requirements of Subpart FF, U.S. Oil will submit, by no later than one-hundred twenty (120)
21 days after submittal of the BWON Compliance Review and Verification Report, an amended
22 TAB report to EPA and PSCAA. If an amended TAB is provided as part of U.S. Oil's BWON
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1 Compliance Review and Verification Report, this will be deemed the amended TAB report for
2 purposes of Subpart FF reporting.

3 16. Implementation of Actions Necessary to Correct Non-Compliance. If the results
4 of the BWON Compliance Review and Verification Report indicate that the Refinery has a TAB
5 of over 10 Mg/yr, U.S. Oil will submit to EPA and PSCAA, by no later than one-hundred eighty
6 (180) days after submission of the BWON Compliance Review and Verification Report, a
7 Corrective Action Plan that identifies with specificity: (a) the actions it will take to ensure that
8 the Refinery's TAB will be reduced below 10 Mg/yr for 2012 and each calendar year thereafter;
9 (b) a compliance strategy and schedule that U.S. Oil will implement to ensure that it complies
10 with the 6 BQ compliance option as soon as practicable but by no later than December 31, 2012,
11 if it cannot ensure a TAB consistently below 10 Mg/yr; or (c), in the event that new controls are
12 required to be installed at the Refinery to comply with the 6 BQ compliance option, U.S. Oil may
13 propose for EPA and PSCAA approval a compliance plan for installation of such controls, which
14 shall be completed as soon as practicable, but in no event longer than three (3) years from the
15 date of submittal of the Corrective Action Plan.

17 17. Implementation of Actions Necessary to Correct Non-Compliance: Review of
18 Plans. Any plan submitted pursuant to Paragraph 16 will be subject to the approval or
19 disapproval by EPA, after an opportunity for consultation with PSCAA. Within sixty (60) days
20 after receiving any notification of disapproval from EPA, U.S. Oil will submit to EPA and
21 PSCAA a revised plan that responds to all identified deficiencies. Unless EPA responds to the
22 revised plan within sixty (60) days, U.S. Oil will implement the proposed plan.
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1 18. Implementation of Actions Necessary to Correct Non-Compliance: Certification
2 of Compliance. By no later than thirty (30) days after completion of the implementation of all
3 actions, if any, required pursuant to Paragraphs 16-17 to come into compliance with the
4 applicable compliance option, U.S. Oil will submit its certification and a report to EPA and
5 PSCAA that the Refinery complies with its compliance option under the Benzene Waste
6 Operations NESHAP.

7 19. Carbon Canisters. U.S. Oil will comply with the requirements of Paragraphs
8 19.a-k at all locations where (a) carbon canister(s) is (are) utilized as a control device under the
9 Benzene Waste Operations NESHAP. To the extent that any applicable state or local rule,
10 regulation, or permit contains more stringent definitions, standards, limitations, or work practices
11 than those set forth in Paragraphs 19.a-k, then those definitions, standards, limitations or work
12 practices will apply instead.

13 a. Installation of Dual Carbon Bed Systems Operated in Series. Except as
14 provided in subparagraph h, the Refinery will only utilize dual carbon bed systems operated in
15 series.

16 b. Report Certifying Installation. By no later than 90 Days after installation
17 of all dual carbon canisters, U.S. Oil will submit a report to EPA and PSCAA certifying the
18 completion of the installations. The report will include a list of all locations within the Refinery
19 where dual carbon bed systems were installed, the installation date of each dual carbon bed
20 system, the date that each dual carbon bed system was put into operation, whether the Refinery is
21 monitoring for breakthrough for volatile organic compounds ("VOCs") or benzene, and the
22 concentration of the monitored parameter that U.S. Oil uses as its definition of "breakthrough."
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1 U.S. Oil must provide written notification to EPA and PSCAA at least thirty (30) days prior to
2 changing either the parameter that it is monitoring and/or the concentration that it defines as
3 "breakthrough."

4 c. Prohibition of Use of Single Bed Canisters. Except as expressly provided
5 in subparagraph h, the Refinery will not use single bed carbon canisters for any new units or
6 installations that require vapor control pursuant to the Benzene Waste Operations NESHAP.

7 d. Definition of "Breakthrough" in Dual Carbon Bed Systems. For dual
8 carbon bed systems in series and depending upon the parameter that U.S. Oil decides to monitor,
9 "breakthrough" between the primary and secondary carbon bed is defined as any reading equal to
10 or greater than either 50 ppm VOC) or 5 ppm benzene. At its option, U.S. Oil may utilize a
11 concentration for "breakthrough" that is lower than 50 ppm VOC or 5 ppm benzene.

12 e. Monitoring for Breakthrough in Dual Carbon Bed Systems. By no later
13 than seven (7) days after the installation of any new dual carbon bed system, the Refinery will
14 start to monitor for breakthrough between the primary and secondary carbon beds at times when
15 there is actual flow to the dual carbon bed system, in accordance with the frequency specified in
16 40 C.F.R. § 61.354(d), and will monitor the outlet of the secondary carbon bed on a monthly
17 basis or at the design replacement interval of the secondary carbon bed (whichever is less) to
18 verify the proper functioning of the system. In the event there is no flow to the dual carbon bed
19 system, the Refinery shall document the lack of flow and remonitor at the next monitoring
20 period.
21

22 f. Replacing Canisters in Dual Carbon Bed Systems. The Refinery will
23 replace the original primary carbon bed (or route the flow to an appropriate alternative control
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1 device) immediately when breakthrough is detected. The original secondary carbon bed will
2 become the new primary carbon bed and a fresh carbon bed will become the secondary bed
3 unless both the primary and secondary carbon beds are replaced. For purposes of this
4 Subparagraph, "immediately" will mean twenty-four (24) hours except where breakthrough is
5 detected on a Saturday, Sunday, or federal holiday, "immediately" will mean within 48 hours or
6 on the next business day, whichever is sooner.

7 g. In lieu of replacing the primary carbon bed immediately, U.S. Oil may
8 elect to monitor the secondary carbon bed on the day breakthrough between the primary and
9 secondary carbon bed is identified and each calendar day thereafter. This daily monitoring will
10 continue until the primary carbon bed is replaced. If the monitored parameter (either benzene or
11 VOC) is detected above background levels at the outlet of the secondary carbon bed during this
12 period of daily monitoring, both carbon beds must be replaced within twenty-four (24) hours.

13 h. Limited Use of Single Bed Canisters. The Refinery may utilize properly-
14 sized single bed canisters for short-term operations such as with temporary storage tanks or as
15 temporary control devices. For single bed canisters operated as part of a single canister system,
16 breakthrough is defined for purposes of this Decree as any reading of VOC or benzene above
17 background level. Beginning no later than the Date of Entry, the Refinery will monitor for
18 breakthrough from single bed carbon canisters each day there is actual flow to the carbon
19 canister.
20

21 i. Replacing Canisters in Single Bed Canister Systems. The Refinery will
22 replace the single bed carbon canister with a fresh carbon canister or with fresh carbon,
23 discontinue flow or route the stream to an alternate, appropriate device immediately when
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1 breakthrough is detected. For this Subparagraph, "immediately" will mean eight (8) hours for
2 single bed canisters of 55 gallons or less and twenty-four (24) hours for single bed canisters
3 greater than 55 gallons. Where breakthrough is detected on a Saturday, Sunday, or federal
4 holiday, replacement must occur within 48 hours or on the next business day, whichever is
5 sooner. If flow to a single bed canister is discontinued under this Subparagraph, such canister
6 may not be placed back into BWON vapor control service until it has been appropriately
7 regenerated or replaced.

8 j. Maintaining Canister Supplies. U.S. Oil will maintain a supply of fresh
9 carbon or carbon canisters at the Refinery at all times.

10 k. Records relating to Canisters. Records for the requirements of Paragraphs
11 19.a-19.j will be maintained in accordance with 40 C.F.R. § 61.356(j)(10).
12

13 20. Annual Review. By no later than 180 days after the Date of Entry, U.S. Oil will
14 modify existing Management of Change procedures at the Refinery or develop a new program to
15 annually review process and project information for the Refinery, including but not limited to
16 construction projects, to ensure that all new benzene waste streams are included in the Refinery's
17 waste stream inventory during the life of the Consent Decree.

18 21. Laboratory Audits.

19 a. U.S. Oil will conduct audits of all laboratories that perform analyses of the
20 Refinery's benzene waste NESHAP samples to ensure that proper analytical and quality
21 assurance/quality control procedures are followed.
22

23 b. By no later than one year after the Date of Entry, U.S. Oil will complete
24 audits of all of the laboratories it uses to perform analyses of benzene waste NESHAP samples.
25

1 From and after one year from the Date of Entry, U.S. Oil will audit any new laboratory to be
2 used for analyses of the Refinery's benzene waste NESHAP samples prior to such use.

3 c. During the life of this Consent Decree, U.S. Oil will conduct subsequent
4 laboratory audits, such that each laboratory is audited every two (2) years.

5 d. U.S. Oil may retain third parties to conduct these audits or use audits
6 conducted by others as its own, but the responsibility and obligation to ensure that the Refinery
7 complies with this Consent Decree and Subpart FF rest solely with U.S. Oil.

8 e. In lieu of conducting laboratory audits as required by this Paragraph, U.S.
9 Oil may elect to use a laboratory that is accredited under the National Environmental Laboratory
10 Accreditation Program ("NELAP") no more often than on an alternating basis (*i.e.*, following a
11 laboratory audit performed as required by this Paragraph, U.S. Oil may use a NELAP accredited
12 laboratory in lieu of performing its own audit pursuant to this Paragraph).

14 22. Benzene Spills. For each spill at the Refinery after Date of Entry, U.S. Oil shall
15 review the spill to determine if benzene waste, as defined by Subpart FF, was generated. For
16 each spill involving the release of more than 10 pounds of benzene in a 24-hour period, U.S. Oil:
17 (i) shall include benzene waste generated by the spill in the Refinery's TAB, as required by 40
18 C.F.R. § 61.342; and (ii) shall account for such benzene waste in accordance with the applicable
19 compliance option calculations, as appropriate under Subpart FF, unless the benzene waste is
20 properly managed in controlled waste management units at the Refinery.

21 23. Training. By no later than the 90 days after the Date of Entry, U.S. Oil will
22 develop and begin implementation of annual (*i.e.*, once each calendar year) training for all
23 employees asked to draw benzene waste samples.
24
25

1 24. Additional Training: U.S. Oil will comply with the provisions of Paragraph 24.a
2 and 24.b if and when the Refinery's TAB equals or exceeds 10 Mg/yr and the Refinery elects the
3 6 BQ compliance option.

4 a. U.S. Oil will complete the development of standard operating procedures
5 for all control equipment used to comply with the Benzene Waste Operations NESHAP.

6 b. U.S. Oil will complete an initial training program regarding these
7 procedures identified pursuant to Paragraph 24.a for all operators assigned to this control
8 equipment. Comparable training will also be provided to any persons who subsequently become
9 operators, prior to their assumption of this duty. Until termination of this Decree, "refresher"
10 training in these procedures will be performed at a minimum on a three (3) year cycle.

11 c. U.S. Oil will propose a schedule for training at the same time that it
12 proposes a plan, pursuant to Paragraph 16, that identifies the compliance strategy and schedule
13 that the Refinery will implement to come into compliance with the 6 BQ compliance option.

14 25. Training: Contractors. As part of U.S. Oil's training programs, U.S. Oil must
15 ensure that the employees of any contractors hired to perform the requirements of Paragraphs 23
16 and 24 (when applicable) are properly trained to implement all applicable provisions of this Part.

17 26. Benzene-Containing Waste Management: Schematics. U.S. Oil will include in
18 the BWON Compliance Review and Verification Report required to be submitted to EPA and
19 PSCAA pursuant to Paragraph 13 schematics for the Refinery that:
20

21 a. depict the waste management units (including sewers) that handle, store,
22 and transfer wastes subject to Subpart FF.

23 b. identify the control status of each waste management unit; and
24
25

1 c. show how the waste streams are transferred within the Refinery. U.S. Oil
2 will include with the schematics a quantification of all uncontrolled waste subject to Subpart FF.
3 If requested by EPA, U.S. Oil will submit to EPA within ninety (90) days of the request, revised
4 schematics regarding the characterization of these wastes and the appropriate control standards.

5 27. Non-Aqueous Benzene Waste Streams. If the TAB equals or exceeds 10
6 Mg/year, all waste management units handling non-exempt, non-aqueous benzene wastes, as
7 defined in Subpart FF, will meet the applicable control standards of Subpart FF.

8 28. Wastes Subject to Subpart FF. For purposes of calculating the Refinery's TAB
9 pursuant to the requirements of 40 C.F.R. § 61.342(a), U.S. Oil will include all wastes subject to
10 Subpart FF that become "aqueous" until such streams are recycled to a process or put into a
11 process feed tank (unless the tank is used primarily for the storage of wastes). Appropriate
12 adjustments will be made to such calculations to avoid the double-counting of benzene. For
13 purposes of complying with the 6 BQ compliance option, all waste management units handling
14 benzene waste streams will either meet the applicable control standards of Subpart FF or will
15 have their uncontrolled benzene quantity count toward the applicable 6 BQ limit.

16 29. Benzene Waste Operations Sampling Plans: General. By no later than 180 days
17 after Date of Entry, U.S. Oil will submit to EPA and PSCAA a BWON sampling plan for the
18 sampling of benzene waste streams that U.S. Oil will undertake to estimate quarterly and annual
19 TABs, as required by this Consent Decree, for the Refinery.
20

21 30. Benzene Waste Operations Sampling Plans: Content Requirements.

22 a. The sampling plan will:
23
24
25

1 i. identify all waste streams that contributed 0.05 Mg/yr or more at
2 the point of generation to the previous year's TAB calculations; and

3 ii. identify the proposed sampling locations on the schematic
4 developed pursuant to Paragraph 26 and the calculation methods to be used in calculating
5 quarterly and annual TAB calculations under the terms of Paragraph 33; and

6 iii. require U.S. Oil to take and analyze, in each calendar quarter, at
7 least three representative samples from all waste streams identified in Paragraph 30.a.i and all
8 locations identified in Paragraph 30.a.ii.

9
10 b. Compliance Plan under Paragraph 16. If U.S. Oil must implement a
11 Corrective Action Plan under Paragraph 16, it may submit a proposed sampling plan that does
12 not include sampling points in locations within the Refinery that are subject to changes proposed
13 in the Corrective Action Plan. To the extent that U.S. Oil believes that such sampling will not be
14 effective until it completes implementation of the Corrective Action Plan, by no later than sixty
15 (60) days prior to the due date for the submission of the sampling plan, U.S. Oil may request
16 EPA approval for postponing its submitting a sampling plan and commencing sampling until the
17 Corrective Action Plan is completed. Should EPA disapprove, the Refinery will submit a
18 sampling plan by the applicable due date in Paragraph 17.

19 31. Benzene Waste Operations Sampling Plans: Timing for Implementation. U.S Oil
20 will implement the sampling required under each sampling plan during the first full calendar
21 quarter after it submits the plan for the Refinery. U.S. Oil will continue to implement the
22 sampling plan (i) unless and until EPA disapproves the plan; or (ii) unless and until U.S. Oil
23 modifies the plan, with EPA's approval, under Paragraph 32.
24
25

1 32. Benzene Waste Operations Sampling Plans: Modifications.

2 a. Changes in Processes, Operations or Other Factors. If changes in
3 processes, operations or other factors lead U.S. Oil to conclude that a proposed or approved
4 sampling plan may no longer provide an accurate basis for estimating the Refinery's quarterly or
5 calendar year annual TABs or benzene quantities under Paragraph 33, then by no later than
6 ninety (90) days after U.S. Oil determines that the plan no longer provides an accurate basis, it
7 will submit to EPA and PSCAA a revised plan for EPA approval. In the first full calendar
8 quarter after submitting the revised plan, the Refinery will implement the revised plan. The
9 Refinery will continue to implement the revised plan unless and until EPA disapproves the
10 revised plan after an opportunity for consultation with PSCAA.
11

12 b. Modifications to Sampling Schedule. If, after four (4) consecutive
13 quarters of sampling pursuant to Paragraphs 29 through 32, all individual quarterly TAB
14 calculations are less than 1.750 Mg, U.S. Oil may reduce the frequency of sampling from
15 quarterly to annually. If, after moving to annual sampling, any TAB calculation is greater than
16 or equal to 7.000 Mg/yr, U.S. Oil shall institute quarterly sampling no later than the end of the
17 next calendar quarter.
18

19 33. Quarterly and Annual Estimations of TABs and Uncontrolled Benzene Quantities.

20 At the end of each calendar quarter, or year pursuant to Paragraph 32.b, and based on sampling
21 results and flow calculations, U.S. Oil will calculate a quarterly and projected annual TAB. If
22 the Refinery elects the 6 BQ compliance option pursuant to Paragraph 11 it shall also calculate
23 the uncontrolled benzene quantities in accordance with Subpart FF. In making these
24 calculations, U.S. Oil will use the average of the three samples collected at each sampling
25

1 location. If these calculations do not identify any potential exceedances of the benzene
2 quantities identified in Paragraph 34, U.S. Oil will submit these calculations in the reports due
3 under Part IX of this Decree.

4 34. Corrective Measures: Basis. Except as set forth in Paragraph 35, U.S. Oil will
5 implement corrective measures specified in Paragraph 36 if:

6 a. the quarterly TAB equals or exceeds 2.5 Mg or the projected TAB equals
7 or exceeds 10 Mg/yr ; or

8 b. the TAB equals or exceeds 10 Mg/yr and the Refinery elects the 6 BQ
9 compliance option pursuant to Paragraph 11 and either: (i) the quarterly uncontrolled benzene
10 quantity equals or exceeds 1.5 Mg; or (ii) the projected calendar year uncontrolled benzene
11 quantity equals or exceeds 6 Mg/yr.
12

13 35. Exception to Implementing Corrective Measures. If U.S. Oil can identify the
14 reason(s) in any particular calendar quarter that the quarterly and projected calendar year
15 calculations result in benzene quantities in excess of those identified in Paragraph 34 and states
16 that it does not expect such reason or reasons to recur, then U.S. Oil may exclude the benzene
17 quantity attributable to the identified reason(s) from the projected calendar year quantity. If that
18 exclusion results in no potential exceedances of the benzene quantities identified in Paragraph
19 34, then U.S. Oil will not be required to implement corrective measures under Paragraphs 34 and
20 36, and then it may exclude the uncontrolled benzene attributable to the identified reason(s). At
21 any time that U.S. Oil proceeds under this Paragraph, it will describe how it satisfied the
22 conditions in this Paragraph in the reports due under Part IX of this Decree.
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1 36. Compliance Assurance Plan. If U.S. Oil meets one or more conditions in
2 Paragraph 34 (except as provided under Paragraph 35), then by no later than sixty (60) days after
3 the end of the calendar quarter in which one or more of the conditions were met, U.S. Oil will
4 submit a Compliance Assurance Plan to EPA with a copy to PSCAA. In that Compliance
5 Assurance Plan, U.S. Oil will identify the cause(s) of the potentially-elevated benzene quantities,
6 all corrective actions that it has taken or plans to take to ensure that the cause(s) will not recur,
7 and the schedule of actions that it will take to ensure that the Refinery complies with the
8 Benzene Waste Operations NESHAP for the calendar compliance year. U.S. Oil will implement
9 the Plan unless and until EPA disapproves the plan after an opportunity for consultation with
10 PSCAA. The Compliance Assurance Plan shall be implemented no later than December 31 of
11 the year following the year in which the conditions of Paragraph 34 were met.
12

13 37. Third Party Assistance. If at least one of the conditions in Paragraph 34 exists at
14 the Refinery in two consecutive quarters, and the provisions of Paragraph 35 do not apply, then
15 U.S. Oil will retain a third party contractor during the following quarter to undertake and
16 complete a TAB study and compliance review at the Refinery within 90 days (*i.e.*, by the end of
17 the following calendar quarter). By no later than 90 days after U.S. Oil receives the results of the
18 third party TAB study and compliance review, it will submit such results and a plan and schedule
19 for remedying any deficiencies identified in the TAB study and compliance review to EPA and
20 PSCAA. U.S. Oil will implement the proposed plan unless and until EPA disapproves the plan
21 after an opportunity for consultation with PSCAA.
22

23 38. Recordkeeping and Reporting Requirements: U.S. Oil will submit the following
24 information along with the reports due pursuant to Part IX of this Decree:
25

1 a. Sampling Results under Paragraphs 32 and 33. The report will include a
2 list of all waste streams sampled, the results of the benzene analysis for each sample, and the
3 computation of the quarterly and projected calendar year TAB and the quarterly and projected
4 calendar year uncontrolled benzene quantity (if required to comply with the 6 BQ compliance
5 option);

6 b. Training. A summary of initial and/or subsequent training conducted in
7 accordance with Paragraphs 23-25; and

8 c. Laboratory Audits. A summary of initial and subsequent audits conducted
9 pursuant to Paragraph 21, including at a minimum, the identification of each laboratory audited,
10 a description of the methods used in the audit, and the results of the audit. If U.S. Oil has elected
11 to use a NELAP accredited lab, the report shall identify each laboratory used and shall include
12 documentation of NELAP accreditation for each laboratory used.

13
14 39. At any time after two years of reporting pursuant to the requirements of Paragraph
15 38, U.S. Oil may submit a request to EPA to modify the reporting frequency for any or all of the
16 reporting categories of Paragraph 38. This request may include a request to report the previous
17 year's projected calendar year TAB and uncontrolled benzene quantity annually rather than
18 semi-annually. U.S. Oil will not change the due dates for its reports under Paragraph 38 unless
19 and until EPA approves U.S. Oil's request after an opportunity for consultation with PSCAA.

20 40. Certifications Required in this Part. Certifications required under this Part will be
21 made in accordance with the provisions of Part IX.

22
23 **VI. LEAK DETECTION AND REPAIR ("LDAR") PROGRAM ENHANCEMENTS**

1 Summary: In addition to complying with all applicable Leak Detection and Repair ("LDAR")
2 regulations, U.S. Oil agrees to the measures set forth in this Part, including audits of the
3 components in light liquid and gaseous service at the Refinery to determine compliance with
4 LDAR requirements and to correct any areas of non-compliance, as well as refinery-wide
5 measures to minimize or eliminate fugitive emissions from components in light liquid and
6 gaseous service.

7
8 41. As of the Date of Entry, equipment within each existing "process unit" (as defined
9 by 40 C.F.R. § 60.591) at the Refinery shall become an "affected facility" for purposes of 40
10 C.F.R. Part 60, Subpart GGG, except as provided in 40 C.F.R. § 60.593 "Exceptions," and shall
11 become subject to and comply with the requirements of 40 C.F.R. Part 60, Subpart GGG, and the
12 requirements of this Part.

13 42. In order to minimize or eliminate fugitive emissions of VOCs, benzene, volatile
14 hazardous air pollutants ("VHAPs"), and organic hazardous air pollutants ("HAPs") from
15 equipment in light liquid and/or in gas/vapor service, U.S. Oil shall implement the enhancements
16 at Paragraph 43 through Paragraph 71 to the LDAR programs under 40 C.F.R. Part 60, Subpart
17 GGG, and Part 63, Subpart CC. The terms "equipment," "in light liquid service" and "in
18 gas/vapor service" shall have the definitions set forth in the applicable provisions of 40 C.F.R.
19 Part 60, Subparts VV and GGG, and Part 63, Subpart CC.

20
21 43. Written Refinery-Wide LDAR Program. By no later than 180 days after Date of
22 Entry, U.S. Oil shall develop and maintain a written, Refinery-wide program for compliance
23 with all applicable federal, state and local LDAR regulations ("the LDAR Program"). U.S. Oil
24 shall implement this Program on a Refinery-wide basis and update such program as may be
25

1 necessary to ensure continuing compliance through and after termination. The LDAR Program
2 shall include at a minimum:

- 3 a. A facility-wide leak rate goal that will be a target for achievement;
- 4 b. An identification of all equipment in light liquid and/or in gas/vapor
5 service in the Refinery that has the potential to leak VOCs, HAPs, VHAPs, and benzene;
- 6 c. Procedures for identifying leaking equipment within process units;
- 7 d. Procedures for repairing and keeping track of leaking equipment;
- 8 e. Procedures (e.g., a Management of Change program) to ensure that
9 components subject to LDAR requirements that are added to the Refinery during scheduled
10 maintenance and construction activities are integrated into the LDAR Program;
- 11 f. A process for evaluating new and replacement LDAR equipment that
12 includes active consideration of equipment or techniques that will minimize leaks and/or
13 eliminate chronic leakers; and
- 14 g. A definition of "LDAR Personnel" (to include Refinery employees and
15 contractors having LDAR responsibilities) and the designation of an "LDAR Coordinator" who
16 shall have the responsibility to implement improvements to the LDAR program.

17
18 44. By no later than 180 days after Date of Entry, U.S. Oil shall submit a copy of the
19 Refinery's initial written LDAR Program to EPA and to PSCAA. EPA shall review and may
20 comment on the written program after an opportunity for consultation with PSCAA. U.S. Oil
21 shall address EPA's comments (if any). A description of program changes shall be maintained
22 on-site during the term of the Consent Decree but need not be submitted to the agencies.
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1 45. Training. U.S. Oil will commence implementation of the following training
2 programs:

3 a. By no later than 180 days after Date of Entry, for any employee newly-
4 assigned to LDAR responsibilities, U.S. Oil shall require that each such employee satisfactorily
5 complete LDAR training prior to beginning any LDAR work;

6 b. By no later than 180 days after Date of Entry, for all the Refinery's
7 employees assigned specific LDAR responsibilities as a primary job function, such as
8 monitoring technicians, database users, QA/QC personnel and the LDAR Coordinator, U.S. Oil
9 shall provide and require completion of initial training before the employee begins LDAR
10 responsibilities and shall provide refresher training at least once every three years;

11 c. By no later than 180 days after Date of Entry, for all employee operations
12 and maintenance personnel, U.S. Oil shall provide and require completion of an initial training
13 program that includes instruction on aspects of LDAR that are relevant to the person's duties.
14 Refresher training for these personnel shall be performed every three years; and

15 d. If contract employees are performing LDAR work, U.S. Oil shall assure
16 that its contractor complies with the training requirements in Subparagraphs 45.a-c, as
17 appropriate, for all such contractor employees and shall require the contractor provide its training
18 information and records to U.S. Oil.
19

20 46. LDAR Audits. U.S. Oil shall implement the Refinery-wide audits set forth in
21 Paragraphs 47-51 to ensure the Refinery's compliance with all applicable LDAR requirements.
22 The LDAR audits shall include but not be limited to:

23 a. Performing comparative monitoring;
24
25

1 b. Reviewing records to ensure that monitoring and repairs were completed
2 in the required periods;

3 c. Reviewing component identification procedures, tagging procedures and
4 data management procedures; and

5 d. Observing the LDAR technicians' calibration and monitoring techniques.

6 During the LDAR audits, leak rates shall be calculated for each process unit where
7 comparative monitoring was performed.

8 47. Initial Compliance Audit. By no later than six (6) months after the Date of Entry,
9 U.S. Oil shall engage a third-party contractor to undertake a refinery-wide audit of its
10 compliance with the LDAR regulations to include, at a minimum, each of the audit requirements
11 set forth in Paragraphs 48-51.
12

13 48. Third-Party Audits. U.S. Oil shall retain an independent contractor(s) with
14 expertise in LDAR program requirements to perform a third-party audit of its LDAR Program no
15 later than four (4) years after the initial compliance audit and thereafter at least once every four
16 (4) years.

17 49. Internal Audits. The Refinery shall conduct internal audits of its LDAR Program
18 using personnel familiar with LDAR program requirements. The Refinery shall complete the
19 first internal LDAR audit by no later than two (2) years after the initial compliance audit under
20 Paragraph 47. Internal audits of the Refinery shall be conducted at least once every four (4)
21 years thereafter.
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1 50. Audit Every Two Years. The Refinery may elect to retain third-parties to
2 undertake the internal audits under Paragraph 49, provided that an audit occurs every two (2)
3 years.

4 51. Implementation of Actions Necessary to Correct Non-Compliance. If the results
5 of any of the audits conducted pursuant to Paragraphs 47-49 identify any areas of non-
6 compliance, U.S. Oil shall implement all steps necessary to correct the area(s) of non-compliance
7 as soon as practicable, and to prevent a recurrence of the cause of the non-compliance to the
8 extent practicable. Within 60 days of completion of an audit, U.S. Oil shall either report to EPA
9 and PSCAA that U.S. Oil is in compliance or if non-compliance is ongoing submit in writing a
10 proposed compliance schedule for correcting the non-compliance. Within 60 days of submission
11 of a non-compliance report, U.S. Oil shall certify to EPA that the Refinery has completed related
12 corrective action and is in compliance or is following the compliance schedule.
13

14 52. Internal Leak Definition for Valves and Pumps. The Refinery shall utilize the
15 internal leak definitions in Paragraphs 53-54 for valves and pumps in light liquid and/or
16 gas/vapor service, unless other permit(s), regulations, or laws require the use of lower leak
17 definitions.

18 53. Leak Definition for Valves. By no later than 18 months after the Date of Entry,
19 the Refinery shall utilize an internal leak definition of 500 ppm VOCs for all of the Refinery's
20 valves that are in HAP or VOC service, excluding pressure relief devices ("Affected Valves").
21

22 54. Leak Definition for Pumps. By no later than 18 months after the Date of Entry,
23 the Refinery shall utilize an internal leak definition of 2,000 ppm VOCs for all of the Refinery's
24 pumps that are in HAP or VOC service ("Affected Pumps").
25

1 55. Reporting of Valves and Pumps Based on the Internal Leak Definitions. For any
2 report other than the reports required under this Part, including but not limited to reports under
3 Federal, State and local regulations and reports under any permit, U.S. Oil may continue to
4 report leak rates in Affected Valves and Affected Pumps against the applicable regulatory or
5 permit leak definition or use the lower, internal leak definitions specified in Paragraphs 53-54.
6 U.S. Oil will identify in the report required by this Part which definition is being used.

7 56. Recording, Tracking, Repairing and Re-Monitoring Leaks Based on the Internal
8 Leak Definitions. By no later than 18 months after the Date of Entry, U.S. Oil shall record,
9 track, repair and remonitor all leaks in excess of the internal leak definitions in Paragraphs 53-
10 54. U.S. Oil shall have five (5) days to make an initial repair attempt and remonitor the
11 component under Paragraph 57 and thirty (30) days either to make repairs and remonitor leaks
12 that are greater than the internal leak definitions but less than the applicable regulatory leak
13 definitions or to place the component on the delay of repair list according to Paragraph 67. All
14 records of repairs, repair attempts, and remonitoring shall be maintained for the life of the
15 Consent Decree.

16 57. Initial Attempt at Repair of Valves. Beginning no later than 18 months after the
17 Date of Entry, the Refinery shall promptly make an "initial attempt" at repair on any Affected
18 Valve that has a reading greater than 200 ppm of VOCs, excluding control valves and other
19 valves that LDAR personnel are not authorized to repair. The Refinery, or its designated
20 contractor, shall remonitor the leaking Affected Valve within five (5) days of identification. If
21 the remonitored leak reading is below the internal leak definition in Paragraphs 53, no further
22 action will be necessary. If the remonitored leak reading is greater than the internal leak
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1 definition in Paragraphs 53, the Refinery shall repair the leaking Affected Valve according to the
2 requirements under Paragraph 56. All records of repairs, repair attempts, and remonitoring shall
3 be maintained for the life of the Consent Decree.

4 58. LDAR Monitoring Frequency: Pumps. Unless more frequent monitoring is
5 required by a federal, state or local regulation when the lower internal leak definition for
6 Affected Pumps becomes applicable pursuant to the provisions of Paragraph 54, the Refinery
7 shall begin monitoring Affected Pumps in light liquid service, other than dual-mechanical seal
8 pumps or pumps vented to a control device, at the lower leak definition on a monthly basis.

9 59. LDAR Monitoring Frequency: Valves. Unless more frequent monitoring is
10 required by a federal, state or local regulation when the lower internal leak definition for
11 Affected Valves becomes applicable pursuant to the provisions of Paragraphs 53, the Refinery
12 shall monitor Affected Valves, other than difficult-to-monitor or unsafe-to-monitor valves, on a
13 quarterly basis.

14 60. Monitoring after Turnaround or Maintenance. The Refinery will have the option
15 of monitoring Affected Valves and Affected Pumps within process unit(s) after completing a
16 documented maintenance, startup, or shutdown activity without having leaks, detected at
17 concentrations greater than the leak definitions required by this Consent Decree but less than
18 regulatory leak definitions, count as a scheduled monitoring activity, provided the Refinery
19 monitors according to the following schedule:
20

21 a. For events involving 250 or fewer Affected Valves and Affected Pumps,
22 monitor within one week after completion of the documented maintenance, startup or shutdown
23 activity;
24
25

1 b. For events involving greater than 250 but fewer than 500 Affected Valves
2 and Affected Pumps, monitor within two (2) weeks after completion of the documented
3 maintenance, startup, or shutdown activity; and

4 c. For events involving greater than 500 and up to 1000 Affected Valves and
5 Affected Pumps, monitor within four (4) weeks of completion of the documented maintenance,
6 startup, or shutdown activity.

7 61. Electronic Storing and Reporting of LDAR Data. The Refinery has and will
8 continue to maintain an electronic database for recordkeeping and reporting of LDAR data.
9

10 62. Electronic Data Collection During LDAR Monitoring and Transfer. Beginning
11 no later than the Date of Entry, the Refinery shall use dataloggers and/or electronic data
12 collection devices during LDAR monitoring. The Refinery, or its designated contractor, shall
13 use its best efforts to transfer, on a daily basis, electronic data from electronic datalogging
14 devices to the electronic database of Paragraph 61. For all monitoring events in which an
15 electronic data collection device is used, the collected monitoring data shall include a time and
16 date stamp, and instrument and operator identification. The Refinery may use paper logs where
17 necessary or more feasible (e.g., small rounds, remonitoring, or when dataloggers are not
18 available or broken), and shall record, at a minimum, the identification of the technician
19 undertaking the monitoring, the date, the daily start and end time for monitoring, and the
20 identification of the monitoring equipment. The Refinery shall transfer any manually recorded
21 monitoring data to the electronic database of Paragraph 61 within seven (7) days of monitoring.
22 U.S. Oil shall maintain the LDAR information required by this paragraph for the life of the
23

1 Consent Decree, and shall provide such LDAR information in the original electronic format upon
2 request by EPA or PSCAA.

3 63. QA/QC of LDAR Data. Beginning no later than the Date of Entry, U.S. Oil shall
4 develop and implement procedures to ensure a quality assurance/quality control ("QA/QC")
5 review of all data generated by LDAR monitoring technicians. U.S. Oil shall ensure that
6 monitoring data collected by monitoring technicians is reviewed for QA/QC by the Refinery
7 personnel weekly. At least once per calendar quarter, U.S. Oil shall QA/QC the monitoring data
8 collected during the quarter which shall include, but not be limited to, an evaluation of the
9 number of components monitored per technician, time between monitoring events, and abnormal
10 data patterns. Results from LDAR monitoring in excess of the Leak Definitions in Paragraphs
11 53 and 54 shall be reported to the appropriate operating supervisors daily.

12
13 64. LDAR Personnel. By no later than the Date of Entry, U.S. Oil shall maintain a
14 position responsible for LDAR management, with the authority to implement the LDAR
15 Program at the Refinery ("LDAR Coordinator").

16 65. Adding New Valves and Pumps. By no later than 180 days after the Date of
17 Entry, U.S. Oil shall establish a tracking program for maintenance records (e.g., a Management
18 of Change program) to ensure that Affected Valves and Affected Pumps added to the Refinery
19 during maintenance and construction are integrated into the LDAR program.

20
21 66. Calibration Drift Assessment. Beginning no later than 18 months after the Date
22 of Entry, the Refinery shall conduct calibration drift assessments of LDAR monitoring
23 equipment at the end of each monitoring shift, at a minimum. The Refinery shall conduct the
24 calibration drift assessment using a 500 ppm calibration gas. All calibrations of LDAR
25

1 monitoring equipment shall use methane as the calibration gas, in accordance with 40 C.F.R. Part
2 60, App. A, EPA Reference Test Method 21, and shall maintain records of the calibrations for
3 the life of the Consent Decree. If any calibration drift assessment after the initial calibration
4 shows a negative drift of more than 10% from the previous calibration, the Refinery shall
5 remonitor all valves that were monitored since the last calibration that had a reading greater than
6 100 ppm and shall remonitor all pumps that were monitored since the last calibration that had a
7 reading greater than 500 ppm.

8
9 67. Delay of Repair. Beginning no later than the Date of Entry, the Refinery shall
10 implement the following requirements for any equipment that it is allowed to place on the "delay
11 of repair" list for repair under 40 C.F.R. § 60.482-9(a):

12 a. For all equipment:

13 i. Require sign-off by the appropriate operating supervisor that the
14 piece of equipment is technically infeasible to repair without a process unit shutdown, before the
15 component is eligible for inclusion on the "delay of repair" list; and

16 ii. Include equipment that is placed on the delay of repair list in the
17 Refinery's regular LDAR monitoring.

18 b. For valves: For Affected Valves (other than control valves) leaking at a
19 rate of 10,000 ppm or greater that cannot otherwise be repaired, the Refinery shall use "drill and
20 tap", or similarly effective repair methods to repair such leaking valves, rather than placing the
21 Affected Valve on the "delay of repair" list, unless the Refinery can demonstrate that there is a
22 safety, mechanical or major environmental concern posed by repairing the leak in this manner.
23 The Refinery shall make two repair attempts (if necessary) using "drill and tap", or similarly
24

1 effective repair method within 30 days of identification of the leak. After two unsuccessful
2 attempts to repair a leaking valve under this Paragraph, the Refinery may place the leaking valve
3 on its "delay of repair" list.

4 c. Any Affected Valve on the delay of repair list that will be replaced with a
5 Certified Low-Leaking Valve or Certified Low-Leaking Valve Packing Technology at the next
6 process unit shutdown may be excluded from equipment subject to the Interim or Final Limit on
7 Delay of Repair, as applicable. Any such valves not so replaced shall be subject to the Interim or
8 Final Limit on Delay of Repair, as applicable.

9 d. As provided in 40 C.F.R. § 60.482-9(f), if a component has not leaked for
10 two (2) consecutive months, it may be removed from the delay of repair list.

11 68. New Method of Repair for Leaking Valves. If a new valve repair method not
12 currently in use by the refining industry is planned to be used by the Refinery, U.S. Oil will
13 advise EPA prior to implementing such a method or, if prior notice is not practicable, as soon as
14 practicable after implementation.

15 69. Chronic Leaker Program. The Refinery shall replace or repack all chronically
16 leaking non-control Affected Valves at the next process unit turnaround. A chronic leaker shall
17 be defined as any component which leaks above 10,000 ppm twice in any four (4) consecutive
18 quarters. If a component has not leaked above 10,000 ppm for a period of twelve (12)
19 consecutive quarters or more prior to a turnaround, it is exempt from the requirements in this
20 Paragraph.
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1 70. Reporting. Consistent with the requirements of Part IX (Recordkeeping and
2 Reporting), U.S. Oil shall include the information set forth below in the designated semi-annual
3 progress report(s):

4 a. First Semi-Annual Report Due under the Consent Decree. At the later of:
5 (i) the first semi-annual report due under the Consent Decree; or (ii) the first semi-annual report
6 after which the requirement was due, U.S. Oil shall include the following:

7 (1) A copy of the written Refinery-wide LDAR Program required by
8 Paragraph 43;

9 (2) A certification of the implementation of the lower leak definitions
10 and monitoring frequencies in Paragraphs 52, 53, 54, 58, 59, and 60;

11 (3) A certification of the implementation of the "initial attempt at
12 repair" program of Paragraph 57;

13 (4) A certification of the implementation of QA/QC procedures for
14 review of data generated by LDAR technicians as required by Paragraph 63;

15 (5) An identification of the LDAR Coordinator as required by
16 Paragraph 64;

17 (6) A certification of the development of a tracking program for new
18 valves and pumps added during maintenance and construction as required by Paragraph 65;

19 (7) A certification of the implementation of the calibration drift
20 assessment procedures of Paragraph 66;

21 (8) A certification of the implementation of the "delay of repair"
22 procedures of Paragraph 67; and
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1 (9) A certification of the implementation of the "chronic leaker"
2 program of Paragraph 69.

3 b. Semi-Annual Report for the First Two Calendar Quarters of Each Year.

4 In the semi-annual progress report that U.S. Oil submits pursuant to Part IX on August 30 of
5 each year, U.S. Oil shall include an identification of each audit that was conducted pursuant to
6 the requirements of Paragraphs 47-50 in the previous calendar year including an identification of
7 the auditors, a summary of the audit results, and a summary of the actions that the Refinery took
8 or intends to take to correct all deficiencies identified in the audits.

9
10 71. Reports due under Part IX of this Consent Decree. In each report due under Part
11 IX of this Consent Decree, U.S. Oil shall include:

12 a. Training. Information identifying the measures that the Refinery took to
13 comply with the provisions of Paragraph 45; and

14 b. The following information on LDAR monitoring and repairs:

15 i. the number of Affected Valves and Affected Pumps present in
16 each process unit during the quarter;

17 ii. the number of Affected Valves and Affected Pumps monitored in
18 each process unit during each quarter;

19 iii. an explanation for missed monitoring if the number of Affected
20 Valves and Affected Pumps present exceeds the number of Affected Valves and Affected Pumps
21 monitored during the quarter;

22 iv. the number of Affected Valves and Affected Pumps found leaking;
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- 1 v. the number of “difficult to monitor” pieces of equipment
2 monitored;
3 vi. a list of all equipment currently on the “delay of repair” list and the
4 date each component was placed on the list;
5 vii. the number of repair attempts not completed promptly according to
6 Paragraph 57 or completed within five (5) days pursuant to Paragraph 56;
7 viii. the number of repairs not completed within thirty (30) days or
8 placed on the delay of repair list according to Paragraph 56 and/or Paragraph 67; and
9 ix. the number of chronic leakers that do not get repaired according to
10 the requirements of Paragraph 69.
11

12 **VII. EMISSION CREDIT GENERATION**
13

14 Summary: This Part addresses the use of emissions reductions that will result from the
15 installation and operation of the controls and procedures required by this Consent Decree (“CD
16 Emissions Reductions”) for the purpose of emissions netting or emissions offsets.

17 72. General Prohibition. U.S. Oil shall not generate or use any emissions reductions,
18 or apply for and obtain any emission reduction credits, that result from any projects conducted or
19 controls utilized pursuant to this Consent Decree as netting reductions or emissions offsets in any
20 PSD, major non-attainment, and/or synthetic minor New Source Review permit or permit
21 proceeding. However, nothing in this Consent Decree is intended to prohibit U.S. Oil from
22 seeking to:
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- 1 a. utilize or generate netting reductions or emission offset credits from
2 refinery units that are covered by this Consent Decree to the extent that the proposed netting
3 reductions or emission offset credits represent the difference between the emissions limitations
4 set forth in or established pursuant to this Consent Decree for these refinery units and the more
5 stringent emissions limitations that U.S. Oil may elect to accept for these refinery units in a
6 permitting process;
- 7 b. utilize or generate netting reductions or emission offset credits for refinery
8 units that are not subject to an emission limitation pursuant to this Consent Decree;
- 9 c. utilize emissions reductions from the installation of controls required by
10 this Consent Decree in determining whether a project that includes both the installation of
11 controls under this Consent Decree and other construction that occurs at the same time and is
12 permitted as a single project triggers major New Source Review requirements; or
- 13 d. utilize emission reductions for compliance with any rules or regulations
14 designed to address regional haze or the non-attainment status of any area (excluding PSD and
15 Non-Attainment New Source Review rules) that apply to the Refinery; provided, however, that
16 U.S. Oil shall not be allowed to trade or sell any CD Emissions Reductions.
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19 **VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

20 Summary: In addition to the injunctive relief required by Parts V and VI U.S. Oil will
21 implement several Supplemental Environmental Projects to further reduce emissions and/or
22 provide other environmental benefits.
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1 73. In accordance with the requirements and schedule set forth in this Part VIII, U.S.
2 Oil shall spend no less than \$746,000 (the "Total SEP Cost") to implement four Supplemental
3 Environmental Projects ("SEPs") described in Appendix A to this Consent Decree and as
4 provided in Paragraphs 74-76, below.

5 74. Supplemental Environmental Projects. U.S. Oil is responsible for the satisfactory
6 completion of the SEPs as provided in this Consent Decree. If U.S. Oil does not expend the
7 Total SEP Cost, U.S. Oil shall pay a stipulated penalty equal to the difference between the
8 amount expended as demonstrated in the certified semi-annual reports and the Total SEP Cost.
9 The stipulated penalty shall be paid as provided in Part XI (Stipulated Penalties) of this Consent
10 Decree.
11

12 75. By signing this Consent Decree, U.S. Oil certifies that it is not required, and has
13 no liability under any federal, state, or local law or regulation or pursuant to any agreements or
14 orders of any court, to perform or develop the SEPs. U.S. Oil further certifies that it has not
15 applied for or received, and will not in the future apply for or receive: (1) credit as a
16 Supplemental Environmental Project or other penalty offset in any other enforcement action for
17 the project set forth in this Part; or (2) credit for any emissions reductions resulting from the
18 projects set forth in this Part in any federal, state, regional or local emissions trading or early
19 reduction program. For federal income tax purposes, U.S. Oil agrees that it will neither
20 capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing
21 SEPs. U.S. Oil also agrees that it will clearly indicate that the projects are being or have been
22 undertaken as part of the settlement of an enforcement action for alleged violations of the CAA
23 and corollary state statutes in any public statements regarding the projects.
24
25

1 76. U.S. Oil shall include in each report required by Paragraph 77 a description of its
2 progress toward implementing the SEPs required by Paragraph 73. In addition, the report
3 required by Paragraph 77 for the period in which the SEP is completed will contain the following
4 information with respect to such project(s):

- 5 a. A detailed description of the project as implemented;
- 6 b. A brief description of any significant operating problems encountered,
7 including any that had an impact on the environment, and the solutions for each problem;
- 8 c. An itemized list of SEP expenditures attaching copies of invoices,
9 receipts, and/or purchase orders, as appropriate;
- 10 d. A certification that the project has been fully implemented pursuant to the
11 provisions of this Consent Decree; and
- 12 e. A description of the environmental and public health benefits resulting
13 from implementation of each project (including quantification of the benefits and pollutant
14 reductions, if feasible).
- 15

16
17 **IX. REPORTING AND RECORDKEEPING**

18 77. On the first February 28 or August 30 after the Date of Entry of the Consent
19 Decree, and semi-annually on each subsequent February 28 and August 30 thereafter, U.S. Oil
20 shall report to EPA and PSCAA as provided in this Part. Each semi-annual report shall contain
21 the following information for the respective six month period (*i.e.*, January through June and
22 July through December) for the Refinery:

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1 a. For the period covered by the report, a summary of the emissions data for
2 the Refinery that is specifically required by the reporting requirements of the Consent Decree;

3 b. A description of any problems anticipated with respect to meeting the
4 requirements of this Consent Decree at the Refinery;

5 c. A description of SEP implementation activity;

6 d. Any such additional matters as U.S. Oil believes should be brought to the
7 attention of EPA and PSCAA; and

8 e. Any additional items required by any other Paragraph of this Consent
9 Decree to be submitted with a semi-annual report.
10

11 78. Certification. Each semi-annual report shall be certified by either the person
12 responsible for environmental management and compliance, or by a person responsible for
13 overseeing implementation of this Consent Decree. The certification shall state:

14 I certify under penalty of law that this information was prepared under my direction or
15 supervision in accordance with a system designed to assure that qualified personnel
16 properly gather and evaluate the information submitted. Based on my directions and my
17 inquiry of the person(s) who manage the system, or the person(s) directly responsible for
18 gathering the information, the information submitted is, to the best of my knowledge and
19 belief, true, accurate, and complete. I am aware that there are significant penalties for
20 submitting false information, including the possibility of fine and imprisonment.

21 U.S. Oil shall retain all records required to be maintained in accordance with this Consent
22 Decree for a period of no less than five (5) years or until Termination, whichever is longer,
23 unless applicable regulations require the record to be maintained longer, in which case U.S. Oil
24 shall comply with those regulations.
25

X. CIVIL PENALTY

1 79. In satisfaction of the claims asserted by the United States and PSCAA in the
2 complaint filed in this matter, within thirty (30) days of the Date of Entry of the Consent Decree,
3 U.S. Oil shall pay a civil penalty of \$230,000.00 as follows:

4 (1) \$115,000 to the United States and (2) \$115,000 to PSCAA

5 80. Payment of the civil penalty to the United States shall be made by Electronic
6 Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current
7 EFT procedures, referencing DOJ Case Number 90-5-2-1-09514, and the civil action case name
8 and case number of this action in the Western District of Washington. The costs of such EFT
9 shall be the responsibility of U.S. Oil. Payment shall be made in accordance with instructions
10 provided to the Company by the Financial Litigation Unit of the U.S. Attorney's Office for the
11 Western District of Washington. Any funds received after 11:00 a.m. (Eastern Time) shall be
12 credited on the next business day. U.S. Oil shall provide notice of payment, referencing DOJ
13 Case Number 90-5-2-1-09514, and the civil action case name and case number to the
14 Department of Justice and to EPA, as provided in Paragraph 153. Payment to PSCAA shall be
15 made in accordance with instructions provided to the Company by PSCAA.

16 81. The civil penalty set forth herein is a penalty within the meaning of Section 162(f)
17 of the Internal Revenue Code, 26 U.S.C. § 162(f). U.S. Oil shall not treat these penalty
18 payments as tax deductible for purposes of federal, state, or local law.
19

20 82. Upon the Date of Entry of the Consent Decree, the Consent Decree shall
21 constitute an enforceable judgment for purposes of post-judgment collection in accordance with
22 Federal Rule of Civil Procedure 69, the Federal Debt Collection Procedure Act, 28 U.S.C. §§
23 3001-3308, and other applicable federal authority. The United States and PSCAA shall be
24

25
CONSENT DECREE BETWEEN PLAINTIFF - 45
UNITED STATES OF AMERICA AND
DEFENDANT U.S. OIL & REFINING CO.

United States Department of Justice
Environment & Natural Resources Division
Environmental Enforcement Section
999 18th Street, Suite 370
Denver, Colorado 80202
(303) 844-1381

1 deemed judgment creditors for purposes of collecting any unpaid amounts of the civil and
2 stipulated penalties and interest.

3
4 **XI. STIPULATED PENALTIES**

5 83. Stipulated penalties shall be paid to the United States for each failure by U.S. Oil
6 to comply with the terms of this Consent Decree as provided herein. In no event shall any
7 stipulated penalty assessed exceed \$37,500 per day for any individual violation of this Consent
8 Decree. Stipulated penalties shall be calculated in the amounts specified in this Part. For those
9 provisions where a stipulated penalty of either a fixed amount or 1.2 times the economic benefit
10 of delayed compliance is available, the decision of which alternative to seek shall rest
11 exclusively within the discretion of the United States.
12

13 **A. Non-Compliance with Requirements for Benzene Waste NESHAP Program**

14 84. For failure to comply with the requirements of Paragraph 11, per day:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per Day</u>
1 st through 30 th day after deadline	\$1000
31 st through 60 th day after deadline	\$2000
Beyond 60 th day after deadline	\$3000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater

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20 85. For failure to complete the BWON Compliance Review and Verification Reports
21 as required by Paragraphs 12-13, and if necessary, Paragraphs 14-15: \$5,000 per month.
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1 86. For failure to submit a plan that provides for actions necessary to correct non-
2 compliance as required by Paragraphs 16-17, or for failure to implement the actions necessary to
3 correct non-compliance and to certify compliance as required by
4 Paragraph 18:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per Day</u>
1 st through 30 th day after deadline	\$1250
31 st through 60 th day after deadline	\$3000
Beyond 60 th day after deadline	\$5000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater

10 87. For failure to comply with the requirements set forth in Paragraphs 19.a-19.j for
11 use, monitoring and replacement of carbon canisters: \$1,000 per incident of non-compliance, per
12 day.

14 88. For failure to submit or maintain any records or materials required by Paragraph
15 19.k of this Consent Decree: \$2,000 per record or submission.

16 89. For failure to establish an annual review program to identify new benzene waste
17 streams as required by Paragraph 20: \$2,500 per month.

18 90. For failure to perform laboratory audits as required by Paragraph 21: \$5,000 per
19 month, per audit.

20 91. For failure to implement the training requirements as set forth in Paragraphs 23-
21 25: \$5,000 per quarter.

22 92. For failure to install controls on waste management units handling non-exempt,
23 non-aqueous wastes as required by Paragraph 27: \$10,000 per month per waste management
24 unit.

93. For failure to submit any plan, report or other deliverable required by Paragraphs 29-32 or 36, or for failure to comply with the requirements of Paragraph 37: \$5,000 per month.

94. For failure to conduct sampling in accordance with the sampling plans required by Paragraphs 30-32: \$250 per week, per waste stream or \$15,000 per quarter, per stream, whichever is greater, but not to exceed \$75,000 per quarter.

95. For failure to submit the written report or deliverables required by Paragraph 38: \$1,000 per week, per report or deliverable.

96. If it is determined through federal, state, or local investigation that the Refinery has failed to include all benzene waste streams in its TAB calculation submitted pursuant to Part V, U.S. Oil shall pay the following, per waste stream:

<u>Waste Stream</u>	<u>Penalty</u>
For waste streams < 0.05 Mg/yr	\$250
For waste streams between 0.05 and 0.1 Mg/yr	\$1000
For waste streams between 0.1 and 0.5 Mg/yr	\$5000
For waste streams > 0.5 Mg/yr	\$10,000

B. Non-Compliance with Requirements for Leak Detection and Repair Program

97. For failure to develop an LDAR Program as required by Paragraph 43: \$3,500 per week.

98. For failure to implement the training programs specified in Paragraph 45: \$10,000 per month, per program.

99. For failure to conduct any of the audits required by Paragraphs 46-50: \$5,000 per month, per audit.

100. For failure to implement any actions necessary to correct non-compliance as required by Paragraph 51:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per Day</u>
1 st through 30 th day after deadline	\$1250
31 st through 60 th day after deadline	\$3000
Beyond 60 th day after deadline	\$5000 or an amount equal to 1.2 times the economic benefit of delayed compliance, whichever is greater

101. For failure to perform monitoring utilizing the lower internal leak rate definitions as specified in Paragraphs 52-54: \$100 per component, but not greater than \$10,000 per month, per process unit.

102. For failure to repair and re-monitor leaks, as required by Paragraph 56, in excess of the lower leak definitions specified in Paragraphs 52-54: \$500 per component, but not greater than \$10,000 per month.

103. For failure to implement the "initial attempt" repair program in Paragraph 57: \$100 per valve, but not greater than \$10,000 per month.

104. For failure to implement and comply with the LDAR monitoring program as required by Paragraphs 58-59: \$100 per component, but not greater than \$10,000 per month, per unit.

105. For failure to use dataloggers or maintain electronic data as required by Paragraphs 61 and 62: \$5,000 per month.

106. For failure to implement the QA/QC procedures described in Paragraph 63: \$10,000 per month.

107. For failure to designate and/or maintain an individual as accountable for LDAR performance as required in Paragraph 64 or for failure to implement the maintenance tracking program in Paragraph 65: \$3,750 per week.

108. For failure to conduct the calibration drift assessments or remonitor valves and pumps based on calibration drift assessments in Paragraph 66: \$100 per missed event.

109. For failure to comply with the requirements for repair set forth at Paragraph 68: \$5,000 per valve or pump, per incident of non-compliance.

110. For failure to comply with the requirement for chronic leakers set forth in Paragraph 69: \$5,000 per valve.

111. For failure to submit any written report or deliverable required by Paragraphs 70-71: \$1,000 per week, per report.

112. If it is determined through a federal, state, or local investigation that the Refinery has failed to include any valves or pumps in its LDAR program, U.S. Oil will pay \$175 per component that it failed to include.

C. Failure To Implement SEPs

113. If U.S. Oil fails to comply with the milestones in Appendix A to this Consent Decree for implementing a SEP, it shall pay stipulated penalties for each failure to meet an applicable deadline, as follows:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per Day</u>
1 st through 30 th day after deadline	\$500
31 st through 60 th day after deadline	\$1500
Beyond 60 th day after deadline	\$3000

114. If U.S. Oil fails to implement a SEP, or halts or abandons work on a SEP, it shall pay a stipulated penalty of \$35,432 for Project 1, \$75,343 for Project 2, \$40,161 for Project 3, and \$368,939 for Project 4. The penalty under this Paragraph shall accrue as of the date specified for completing the SEP or the date performance ceases, whichever is earlier. In no event shall the stipulated penalties under Part XI C. of this Consent Decree plus the actual costs expended on the SEPs exceed the Total SEP Cost.

D. Non-Compliance with Requirements for Reporting and Record Keeping

115. For each failure to submit reports as required by Part IX, per report, per day:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per Day</u>
1 st through 30 th day after deadline	\$300
31 st through 60 th day after deadline	\$1000
Beyond 60 th day after deadline	\$2000

116. For each failure to submit a written report (unless a more specific stipulated penalty applies), per day:

<u>Period of Delay or Non-Compliance</u>	<u>Penalty per Day</u>
1 st through 30 th day after deadline	\$200
31 st through 60 th day after deadline	\$500
Beyond 60 th day after deadline	\$1000

E. Non-Compliance with Requirements for Payment of Civil Penalties

117. For the failure to pay the civil penalties as specified in Part X of this Consent Decree, U.S. Oil will be liable for \$15,000 per day plus interest on the amount overdue at the rate specified in 28 U.S.C. § 1961(a).

F. General Provisions Related to Stipulated Penalties

118. Demand for Stipulated Penalties. U.S. Oil will pay stipulated penalties upon written demand by the United States or PSCAA by no later than sixty (60) days after U.S. Oil receives such demand. Demand from one agency will be deemed a demand from all applicable agencies, but the agencies will consult with each other prior to making a demand. A demand for the payment of stipulated penalties will identify the particular violation(s) to which the stipulated penalty relates, the stipulated penalty amount that EPA or PSCAA is demanding for each violation, the calculation method underlying the demand, and the grounds upon which the demand is based. After consultation with each other, the United States or PSCAA may, in their unreviewable discretion, waive payment of any portion of stipulated penalties that may accrue under this Consent Decree.

119. Payment of Stipulated Penalties. Stipulated penalties owed by U.S. Oil will be paid 50% to the United States and 50% to PSCAA. Stipulated penalties owing to the United States of under \$10,000 will be paid by check and made payable to "U.S. Department of Justice," referencing DOJ Number 90-5-2-1-09514, and delivered to the U.S. Attorney's Office in the Western District of Washington at 700 Stewart Street, Suite 5220, Seattle, Washington, 98101-1271. Stipulated penalties owing to the United States of \$10,000 or more and stipulated

1 penalties owing to PSCAA will be paid in the manner set forth in Part X (Civil Penalty) of this
2 Consent Decree.

3 120. Stipulated Penalties Dispute. Stipulated penalties will begin to accrue on the day
4 after performance is due or the day a violation occurs, whichever is applicable, and will continue
5 to accrue until performance is satisfactorily completed or until the violation ceases. However, in
6 the event of a dispute over stipulated penalties, stipulated penalties will not accrue commencing
7 upon the date U.S. Oil files a petition with the Court under Part XV (Retention of
8 Jurisdiction/Dispute Resolution) if U.S. Oil has placed the disputed amount demanded in a
9 commercial escrow account with interest. If the dispute thereafter is resolved in U.S. Oil's favor,
10 the escrowed amount plus accrued interest will be returned to U.S. Oil; otherwise, EPA and
11 PSCAA will be entitled to the amount that was determined to be due by the Court, plus the
12 interest that has accrued in the escrow account on such amount.

14 121. The United States and PSCAA reserve the right to pursue any other nonmonetary
15 remedies to which they are legally entitled, including but not limited to, injunctive relief, for U.S.
16 Oil's violations of this Consent Decree. Where a violation of this Consent Decree is also a
17 violation of the CAA, its regulations, or a federally-enforceable state or local law, regulation, or
18 permit, the United States will not seek civil penalties where it already has demanded and secured
19 stipulated penalties under this Consent Decree from U.S. Oil for the same violations nor will the
20 United States demand stipulated penalties from U.S. Oil for a Consent Decree violation if the
21 United States has issued a compliance order or administrative order for penalties or commenced
22 litigation under the CAA for the same violations. Where a violation of this Consent Decree is
23 also a violation of state law, regulation or a permit, PSCAA will not seek civil penalties where it
24
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1 already has demanded and/or secured stipulated penalties under this Consent Decree from U.S.
2 Oil for the same violations, nor will PSCAA demand stipulated penalties from U.S. Oil for a
3 Consent Decree violation if PSCAA has issued a compliance order or administrative order for
4 penalties, or has commenced litigation under the CAA or state or local law for the same
5 violations.

6 7 **XII. INTEREST**

8
9 122. U.S. Oil will be liable for interest on the unpaid balance of the civil penalty
10 specified in Part X, and for interest on any unpaid balance of stipulated penalties to be paid in
11 accordance with Part XI. All such interest will accrue at the rate established pursuant to 28
12 U.S.C. § 1961(a) – *i.e.*, a rate equal to the coupon issue yield equivalent (as determined by the
13 Secretary of Treasury) of the average accepted auction price for the last auction of 52-week U.S.
14 Treasury bills settled prior to the Date of Lodging of the Consent Decree. Interest will be
15 computed daily and compounded annually. Interest will be calculated from the date payment is
16 due under the Consent Decree through the date of actual payment. For purposes of this
17 Paragraph, interest pursuant to this Paragraph will cease to accrue on the amount of any
18 stipulated penalty payment made into an interest bearing escrow account as contemplated by
19 Paragraph 120 of the Consent Decree. Monies timely paid into escrow will not be considered to
20 be an unpaid balance under this Part.

21 22 **XIII. RIGHT OF ENTRY**

123. Any authorized representative of EPA or PSCAA, upon presentation of credentials, will have a right of entry upon the premises of the facilities of the Refinery at any reasonable time for the purpose of monitoring compliance with the provisions of this Consent Decree, including inspecting plant equipment and systems, and inspecting all records maintained by U.S. Oil required by this Consent Decree or deemed necessary by EPA or PSCAA to verify compliance with this Consent Decree. Nothing in this Consent Decree will limit the authority of EPA to conduct tests, inspections, or other activities under any statutory or regulatory provision.

XIV. FORCE MAJEURE

124. If any event occurs which causes or may cause a delay or impediment to performance in complying with any provision of this Decree, U.S. Oil shall notify the United States and PSCAA in writing as soon as practicable, but in any event within twenty (20) business Days of the date when U.S. Oil first knew of the event or should have known of the event by the exercise of due diligence ("Force Majeure Notice"). In this notice, U.S. Oil shall specifically reference this Paragraph of this Decree and describe the anticipated length of time the delay may persist, the cause or causes of the delay, and the measures taken or to be taken by U.S. Oil to prevent or minimize the delay and the schedule by which those measures shall be implemented. U.S. Oil shall take all reasonable steps to avoid or minimize such delays. The notice required by this Paragraph shall be provided in accordance with Paragraph 153 of this Consent Decree. Failure by U.S. Oil to substantially comply with this notice requirement shall render this Section voidable by the United States, as to the specific event for which U.S. Oil has failed to comply with such notice requirement, and, if voided, is of no effect as to the particular event involved.

1 The United States, after consultation with PSCAA, shall notify U.S. Oil in writing regarding its
2 claim of a delay or impediment to performance within forty-five (45) Days of receipt of a Force
3 Majeure Notice.

4 125. If the United States agrees that the delay or impediment to performance has been
5 or will be caused by circumstances beyond the control of U.S. Oil, including any entity
6 controlled by U.S. Oil, and that U.S. Oil could not have prevented the delay by the exercise of
7 due diligence, the Parties shall stipulate to an extension of the required deadline(s) for all
8 requirement(s) affected by the delay by a period equivalent to the delay actually caused by such
9 circumstances or such other period as may be appropriate under the circumstances. Such
10 stipulation shall be filed as a modification to the Decree pursuant to the modification procedures
11 established in this Decree. U.S. Oil shall not be liable for stipulated penalties for the period of
12 any such delay.
13

14 126. If the United States does not accept U.S. Oil's claim of a delay or impediment to
15 performance, U.S. Oil must submit the matter to the Court for resolution to avoid payment of
16 stipulated penalties, by filing a petition for determination with the Court no later than thirty (30)
17 Days after receipt of the United States' notice provided pursuant to Paragraph 124. Once U.S.
18 Oil has submitted this matter to the Court, the United States shall have forty-five (45) Days to
19 file its response to the petition. If the Court determines that the delay or impediment to
20 performance has been or will be caused by circumstances beyond the control of U.S. Oil,
21 including any entity controlled by U.S. Oil, and that the delay could not have been prevented by
22 U.S. Oil by the exercise of due diligence, U.S. Oil shall be excused as to that event(s) and delay
23 (including stipulated penalties), for all requirements affected by the delay for a period of time
24
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1 equivalent to the delay caused by such circumstances or such other period as may be determined
2 by the Court. U.S. Oil shall bear the burden of proving that any delay of any requirement(s) of
3 this Decree was caused by or will be caused by circumstances beyond its control, including any
4 entity controlled by it, and that it could not have prevented the delay by the exercise of due
5 diligence. U.S. Oil shall also bear the burden of proving the duration and extent of any delay(s)
6 attributable to such circumstances. An extension of one compliance date based on a particular
7 event may, but will not necessarily, result in an extension of a subsequent compliance date or
8 dates.

9
10 127. Unanticipated or increased costs or expenses associated with the performance of
11 U.S. Oil's obligations under this Decree shall not constitute circumstances beyond its control, or
12 serve as the basis for an extension of time under this Section.

13 128. Notwithstanding any other provision of this Decree, this Court shall not draw any
14 inferences nor establish any presumptions adverse to either Party as a result of U.S. Oil serving a
15 Force Majeure Notice or the Parties' inability to reach agreement.

16 129. As part of the resolution of any matter submitted to this Court under this Section,
17 the Parties by agreement, or the Court, by order, may extend or modify the schedule for
18 completion of work under the Decree to account for the delay in the work that occurred or will
19 occur as a result of any delay or impediment to performance agreed to by the United States or
20 approved by this Court. U.S. Oil shall be liable for stipulated penalties for its failure thereafter to
21 complete the work in accordance with the extended or modified schedule.
22

23 **XV. RETENTION OF JURISDICTION/DISPUTE RESOLUTION**
24
25

CONSENT DECREE BETWEEN PLAINTIFF - 57
UNITED STATES OF AMERICA AND
DEFENDANT U.S. OIL & REFINING CO.

United States Department of Justice
Environment & Natural Resources Division
Environmental Enforcement Section
999 18th Street, Suite 370
Denver, Colorado 80202
(303) 844-1381

1 130. This Court will retain jurisdiction of this matter for the purposes of implementing
2 and enforcing the terms and conditions of the Consent Decree and for the purpose of
3 adjudicating all disputes between the United States, PSCAA, and U.S. Oil that may arise under
4 the provisions of the Consent Decree, until the Consent Decree terminates in accordance with
5 Part XVIII of this Consent Decree.

6 131. The dispute resolution procedure set forth in this Part will be available to resolve
7 any and all disputes arising under this Consent Decree, except as otherwise provided in Part XIV
8 (Force Majeure), provided that the Party making such application has made a good faith attempt
9 to resolve the matter with the other Party.

10 132. The dispute resolution procedure required herein will be invoked upon the giving
11 of written notice by one of the Parties to this Consent Decree to the other Parties advising the
12 other Parties of a dispute pursuant to this Part. The notice will describe the nature of the dispute,
13 and will state the noticing Party's position with regard to such dispute. The Parties receiving
14 such notice will acknowledge receipt of the notice and the Parties will expeditiously schedule a
15 meeting to discuss the dispute informally.

16 133. Disputes submitted to dispute resolution will, in the first instance, be the subject
17 of informal negotiations between the Parties. Such period of informal negotiations will not
18 extend beyond ninety (90) calendar days from the date of the first meeting between
19 representatives of the Parties, unless the Parties agree in writing that this period should be
20 extended. Failure by the parties to extend the informal negotiation period in writing will not
21 terminate the informal negotiation period provided that the parties are continuing to negotiate in
22 good faith.
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1 134. In the event that the Parties are unable to reach agreement during such informal
2 negotiation period, the United States or PSCAA, as applicable, shall provide U.S. Oil with a
3 written summary of its position regarding the dispute. The submission of a written summary
4 under this Paragraph shall cease informal negotiations.

5 135. Under the circumstances of Paragraph 134, the position advanced by the United
6 States and/or PSCAA will be considered binding unless, within sixty (60) calendar days of U.S.
7 Oil's receipt of the written summary, U.S. Oil files with the Court a petition which describes the
8 nature of the dispute. The United States or PSCAA will respond to the petition within sixty (60)
9 calendar days of filing. In resolving a dispute between the parties under these circumstances, the
10 position of the United States and PSCAA will be upheld if supported by substantial evidence in
11 the administrative record, which may be supplemented for good cause shown.

12 136. In the event that the United States and PSCAA make differing determinations or
13 take differing actions that affect U.S. Oil's rights or obligations under this Consent Decree, the
14 final decisions of the United States will take precedence.

15 137. Where the nature of the dispute is such that a more timely resolution of the issue
16 is required, the time periods set forth in this Part may be shortened upon motion of one of the
17 Parties to the dispute.

18 138. The Parties do not intend that the invocation of this Part by a Party cause the
19 Court to draw any inferences nor establish any presumptions adverse to either Party as a result of
20 invocation of this Part.

21 139. As part of the resolution of any dispute submitted to dispute resolution, the
22 Parties, by agreement, or this Court, by order, may, in appropriate circumstances, extend or
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1 modify the schedule for completion of work under this Consent Decree to account for the delay
2 in the work that occurred as a result of dispute resolution. U.S. Oil will be liable for stipulated
3 penalties for its failure thereafter to complete the work in accordance with the extended or
4 modified schedule.

5
6 **XVI. EFFECT OF SETTLEMENT**

7
8 **140. LDAR, Benzene Waste and Petroleum Refining NESHAP Resolution of Liability.**

9 Entry of this Consent Decree shall resolve all civil liability of U.S. Oil to the United States and
10 PSCAA for the violations alleged in the Complaint, and in EPA's Notice of Violation issued to
11 U.S. Oil on October 5, 2007, and all Notices of Violation issued by PSCAA to U.S. Oil that (1)
12 commenced and ceased prior to the Date of Entry of the Consent Decree; and (2) commenced
13 prior to the Date of Entry of the Consent Decree and continued past the Date of Entry, provided
14 that the events giving rise to the Benzene Waste NESHAP and LDAR violations are identified
15 and addressed by U.S. Oil as required under Paragraphs 12-16 for Benzene Waste NESHAP
16 requirements and under Paragraphs 46 and 51 for LDAR requirements; provided, however, that
17 U.S. Oil will receive no release of liability for LDAR violations that were not identified in Initial
18 Compliance Audits, as set forth in Paragraph 47.

19
20 **141. Reservation of Rights.** Notwithstanding the resolution of liability in Paragraph
21 142, nothing in this Consent Decree precludes the United States and/or PSCAA from seeking
22 from U.S. Oil injunctive and/or other equitable relief or civil penalties for violations by U.S. Oil
23 of Benzene Waste and Petroleum Refining NESHAP and/or LDAR requirements that (A)
24 commenced prior to the Date of Entry of this Consent Decree and continued after the Date of
25

1 Entry if U.S. Oil fails to identify and address such violations as required by Paragraphs 12-16,
2 and Paragraph 51; or (B) commenced after the Date of Entry of the Consent Decree.

3 142. Audit Policy. Nothing in this Consent Decree is intended to limit or disqualify
4 U.S. Oil, on the grounds that information was not discovered and supplied voluntarily, from
5 seeking to apply EPA's Audit Policy or any state or local audit policy to any violations or non-
6 compliance that U.S. Oil discovers during the course of any investigation, audit, or enhanced
7 monitoring U.S. Oil is required to undertake pursuant to this Consent Decree.

8 143. Claim/Issue Preclusion. In any subsequent administrative or judicial proceeding
9 initiated by the United States or PSCAA for injunctive relief, penalties, or other appropriate
10 relief relating to the Refinery for violations of the NESHAP and/or LDAR requirements not
11 identified in Part XVI (Effect of Settlement) of the Consent Decree and/or the Complaint:
12

13 a. U.S. Oil shall not assert, and may not maintain, any defense or claim
14 based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, or claim-
15 splitting. Nor may U.S. Oil assert, or maintain, any other defenses based upon any contention
16 that the claims raised by the United States or PSCAA in the subsequent proceeding were or
17 should have been brought in the instant case. Nothing in the preceding sentences is intended to
18 affect the ability of U.S. Oil to assert that the claims are deemed resolved by virtue of this Part of
19 the Consent Decree.

20 b. Except as set forth in Paragraph 143.a, above, the United States and
21 PSCAA may not assert or maintain that this Consent Decree constitutes a waiver or
22 determination of, or otherwise obviates, any claim or defense whatsoever, or that this Consent
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1 Decree constitutes acceptance by U.S. Oil of any interpretation or guidance issued by EPA
2 related to the matters addressed in this Consent Decree.

3 144. Imminent and Substantial Endangerment. Nothing in this Consent Decree shall
4 be construed to limit the authority of the United States and PSCAA to undertake any action
5 against any person to abate or correct conditions which may present an imminent and substantial
6 endangerment to the public health, welfare, or the environment.

7
8 **XVII. GENERAL PROVISIONS**

9
10 145. Other Laws. Except as specifically provided by this Consent Decree, nothing in
11 this Consent Decree will relieve U.S. Oil of its obligation to comply with all applicable federal,
12 state and local laws and regulations, including but not limited to more stringent standards. In
13 addition, nothing in this Consent Decree will be construed to prohibit or prevent the United
14 States or PSCAA from developing, implementing, and enforcing more stringent standards
15 subsequent to the Date of Lodging of this Consent Decree through rulemaking, the permit
16 process, or as otherwise authorized or required under federal, state or local laws and regulations.
17 Subject to Part XVI (Effect of Settlement), Part XI (Stipulated Penalties), and Paragraph 146
18 (Permit Violations) of this Consent Decree, nothing contained in this Consent Decree will be
19 construed to prevent or limit the rights of the United States or PSCAA to seek or obtain other
20 remedies or sanctions available under other federal, state or local statutes or regulations, by
21 virtue of U.S. Oil's violation of the Consent Decree or of the statutes and regulations upon which
22 the Consent Decree is based, or for U.S. Oil's violations of any applicable provision of law. This
23 will include the right of the United States or PSCAA to invoke the authority of the Court to order
24
25

1 U.S. Oil's compliance with this Consent Decree in a subsequent contempt action. The
2 requirements of this Consent Decree do not exempt U.S. Oil from complying with any and all
3 new or modified federal, state, regional and/or local statutory or regulatory requirements that
4 may require technology, equipment, monitoring, or other upgrades after the Date of Lodging of
5 this Consent Decree.

6 146. Permit Violations. Except as provided in Paragraph 121, nothing in this Consent
7 Decree will be construed to prevent or limit the right of the United States or PSCAA to seek
8 injunctive or monetary relief for violations of permits; provided, however, that with respect to
9 monetary relief, the United States and PSCAA must elect between filing a new action for such
10 monetary relief or seeking stipulated penalties under this Consent Decree, if stipulated penalties
11 also are available for the alleged violation(s).

12 147. Reports Not Subject to PSCAA Electronic Reporting. No report, notice or
13 submission to PSCAA under this Consent Decree shall be a "compliance report" under PSCAA
14 Regulation 1, § 7.09(c).

15 148. Failure of Compliance. The United States and PSCAA do not, by their consent to
16 the entry of this Consent Decree, warrant or aver in any manner that U.S. Oil's complete
17 compliance with the Consent Decree will result in compliance with the provisions of the CAA or
18 the corollary state and local statutes. Notwithstanding the review or approval by EPA or PSCAA
19 of any plans, reports, policies or procedures formulated pursuant to the Consent Decree, U.S. Oil
20 will remain solely responsible for compliance with the terms of the Consent Decree, all
21 applicable permits, and all applicable federal, state and local laws and regulations, except as
22 provided in Part XIV (Force Majeure).
23
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1 149. Service of Process. U.S. Oil hereby agrees to accept service of process by
2 certified or registered mail return receipt requested with respect to all matters arising under or
3 relating to the Consent Decree and to waive the formal service requirements set forth in Rule 4
4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but
5 not limited to, service of a summons. The persons identified by U.S. Oil at Paragraph 153 are
6 authorized to accept service of process with respect to all matters arising under or relating to the
7 Consent Decree.

8 150. Costs. Each Party to this action will bear its own costs and attorneys' fees.

9 151. Public Documents. All information and documents submitted by U.S. Oil to EPA
10 and PSCAA pursuant to this Consent Decree will be subject to public inspection in accordance
11 with the respective statutes and regulations that are applicable to EPA and PSCAA, unless
12 subject to legal privileges or protection or identified and supported as trade secrets or business
13 confidential in accordance with the respective state or federal statutes or regulations.

14 152. Public Notice and Comment. The Parties agree to the Consent Decree and agree
15 that the Consent Decree may be entered upon compliance with the public notice procedures set
16 forth at 28 C.F.R. § 50.7, and upon notice to this Court from the United States Department of
17 Justice requesting entry of the Consent Decree. The United States and PSCAA reserve the right
18 to withdraw or withhold its consent to the Consent Decree if public comments disclose facts or
19 considerations indicating that the Consent Decree is inappropriate, improper, or inadequate.

20 153. Notice. Unless otherwise provided herein, notifications to or communications
21 between the Parties will be deemed submitted on the date they are postmarked and sent by U.S.
22 Mail, postage pre-paid for certified or registered mail return receipt requested, or by equivalent
23
24
25

1 private service with tracking and confirmation of delivery. Each report, study, notification or
2 other communication of U.S. Oil will be submitted as specified in this Consent Decree. If the
3 date for submission of a report, study, notification or other communication falls on a Saturday,
4 Sunday or legal holiday, the report, study, notification or other communication will be deemed
5 timely if it is submitted the next business day. Except as otherwise provided herein, all reports,
6 notifications, certifications, or other communications required or allowed under this Consent
7 Decree to be submitted or delivered to the United States, EPA, PSCAA, and U.S. Oil will be
8 addressed as follows:

9
10 **As to the United States:**

11 Chief, Environmental Enforcement Section
12 Environment and Natural Resources Division
13 U.S. Department of Justice
14 P.O. Box 7611, Ben Franklin Station
15 Washington, DC 20044-7611

16 **As to EPA:**

17 Director, Office of Compliance and Enforcement
18 U.S. Environmental Protection Agency
19 Mail Stop OCE-164
20 1200 6th Avenue, Suite 900
21 Seattle, WA 98101

22 And an electronic copy to:

23 keenan.john@epa.gov

24 **As to PSCAA:**

25 Laurie Halverson
Director, Compliance & Legal
Puget Sound Clean Air Agency
1904 Third Avenue, Suite 106
Seattle, WA 98101

As to the Refinery:

Alan J. Cabodi
Vice-President, Manufacturing
U.S. Oil & Refining Co.
3001 Marshall Ave.
Tacoma, WA 98421

And an electronic copy to:

tig@usor.com

Any Party may change either the notice recipient or the address for providing notices to it by serving all other Parties with a notice setting forth such new notice recipient or address. In addition, the nature and frequency of reports required by the Consent Decree may be modified by mutual consent of the Parties. The consent of the United States to such modification must be in the form of a written notification from EPA, but need not be filed with the Court to be effective.

154. Approvals. Except as otherwise specifically provided in this Consent Decree, all EPA approvals will be made in writing.

155. Opportunity for Comment by PSCAA. For all provisions of Part V and VI where EPA approval is required, PSCAA is entitled to provide comments to EPA and to consult with EPA regarding the issue in question.

156. Paperwork Reduction Act. The information required to be maintained or submitted pursuant to this Consent Decree is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. §§ 3501 *et seq.*

157. Modification. This Consent Decree contains the entire agreement of the Parties and will not be modified by any prior oral or written agreement, representation or understanding. Prior drafts of the Consent Decree will not be used in any action involving the interpretation or

1 enforcement of the Consent Decree. Non-material modifications to this Consent Decree will be
2 effective when signed in writing by EPA, PSCAA and U.S. Oil. The United States will file non-
3 material modifications with the Court on a periodic basis. For purposes of this Paragraph, non-
4 material modifications include but are not limited to modifications to the frequency of reporting
5 provided that such changes are agreed upon in writing between EPA, PSCAA and U.S. Oil.

6 Material modifications to this Consent Decree will be in writing, signed by EPA, PSCAA, and
7 U.S. Oil, and will be effective upon approval by the Court.

8
9 158. Effect of Shutdown. If there is a permanent shutdown of the Refinery, the
10 surrender of all air permits for the Refinery will be deemed to satisfy all requirements of this
11 Consent Decree applicable to the Refinery on and after the later of: (i) the date of the shutdown
12 of the Refinery; or (ii) the date of the surrender of all permits. If there is a permanent shutdown
13 of a process unit at the Refinery, U.S. Oil may use the process for Certification of Completion in
14 Part XVIII (Termination) that the process unit is permanently shutdown which shall be deemed
15 to satisfy all requirements of this Consent Decree applicable to that process unit.

16 17 XVIII. TERMINATION

18 159. Certification of Completion: Applicable Parts. Prior to moving for termination
19 under Paragraph 164, U.S. Oil may seek to certify completion of one or more of the following
20 Parts of the Consent Decree applicable to the Refinery:

- 21
22 a. Part V (Benzene);
23 b. Part VI (LDAR); and
24 c. Part VIII (Supplemental Environmental Projects).

1 160. Certification of Completion: U.S. Oil Actions. If U.S. Oil concludes that any of
2 the Parts of the Consent Decree identified in Paragraph 159 have been completed, U.S. Oil may
3 submit a written report to EPA and PSCAA describing the activities undertaken and certifying
4 that the applicable Part(s) have been completed in full satisfaction of the requirements of this
5 Consent Decree, and that U.S. Oil is in substantial and material compliance with all of the other
6 requirements of the Consent Decree. The report will contain the following statement, signed by
7 a responsible corporate official of U.S. Oil:

8 To the best of my knowledge, after appropriate investigation, I certify that the
9 information contained in or accompanying this submission is true, accurate and complete.
10 I am aware that there are significant penalties for submitting false information, including
11 the possibility of fine and imprisonment for knowing violations.

12 161. Certification of Completion: EPA Actions. Upon receipt of U.S. Oil's
13 certification and after opportunity for comment by PSCAA, EPA will notify U.S. Oil whether the
14 requirements set forth in the applicable Part have been completed in accordance with this
15 Consent Decree:

16 a. If EPA concludes that the requirements have not been fully complied with,
17 EPA will notify U.S. Oil as to the activities that must be undertaken to complete the applicable
18 Part of the Consent Decree. U.S. Oil will perform all activities described in the notice, subject to
19 its right to invoke the dispute resolution procedures set forth in Part XV (Retention of
20 Jurisdiction/Dispute Resolution); and/or

21 b. If EPA concludes that the requirements of the applicable Part have been
22 completed in accordance with this Consent Decree, EPA will so certify in writing to U.S. Oil.
23 This certification will constitute the certification of completion of the applicable Part for
24
25

1 purposes of this Consent Decree. The Parties recognize that ongoing obligations under such Part
2 remain and necessarily continue (*e.g.*, reporting, recordkeeping, training, auditing requirements),
3 and that U.S. Oil's certification is that it is in current compliance with all such obligations.

4 162. Certification of Completion: No Impediment to Stipulated Penalty Demand.

5 Nothing in Paragraphs 160 and 161 will preclude the United States or PSCAA from seeking
6 stipulated penalties for a violation of any of the requirements of the Consent Decree regardless of
7 whether a Certification of Completion has been issued under Paragraph 161.b of the Consent
8 Decree. In addition, nothing in this Paragraph will permit U.S. Oil to fail to implement any
9 ongoing obligations under the Consent Decree regardless of whether a Certification of
10 Completion has been issued.
11

12 163. Termination: Conditions Precedent. This Consent Decree will be subject to
13 termination upon motion by the Parties or upon motion by U.S. Oil acting alone under the
14 conditions identified in this Paragraph. Prior to seeking termination, U.S. Oil must have
15 completed and satisfied all of the following requirements of this Consent Decree:

- 16 a. Installation of control technology systems as specified in this Consent
17 Decree;
18 b. Compliance with all provisions contained in this Consent Decree, such
19 compliance may be established for specific parts of the Consent Decree in accordance with
20 Paragraphs 159-162;
21 c. Payment of all penalties and other monetary obligations due under the
22 terms of the Consent Decree; unless all penalties and/or other monetary obligations owed to the
23 United States or PSCAA are fully paid as of the time of the Motion;
24
25

1 d. Completion of the Supplemental Environmental Projects under Part VIII;
2 and

3 e. Implementation of the BWON and LDAR Program Requirements
4 described in Parts V and VI of this Consent Decree for a period of at least six (6) years from the
5 Date of Entry of this Decree.

6 164. Termination Procedure. At such time as U.S. Oil believes that it has satisfied the
7 requirements for termination set forth in Paragraph 163, U.S. Oil will certify such compliance
8 and completion to the United States and PSCAA in accordance with the certification language of
9 Paragraph 160. Unless the United States or PSCAA object in writing with specific reasons
10 within one-hundred twenty (120) days of receipt of U.S. Oil's certification under this Paragraph,
11 the Court may upon motion by U.S. Oil order that this Consent Decree be terminated. If the
12 United States or PSCAA object to the certification by U.S. Oil, then the matter will be submitted
13 to the Court for resolution under Part XV (Retention of Jurisdiction/Dispute Resolution). In such
14 case, U.S. Oil will bear the burden of proving that this Consent Decree should be terminated.
15

16 **XIX. SIGNATORIES**

17
18 165. Each of the undersigned representatives certifies that they are fully authorized to
19 enter into the Consent Decree on behalf of such Parties, and to execute and to bind such Parties
20 to the Consent Decree.
21
22
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Dated and entered this 6 day of Jan, 2011.

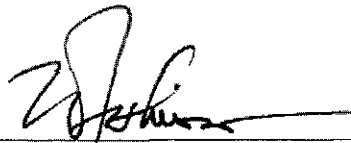

UNITED STATES DISTRICT JUDGE

CONSENT DECREE BETWEEN PLAINTIFF - 71
UNITED STATES OF AMERICA AND
DEFENDANT U.S. OIL & REFINING CO.

United States Department of Justice
Environment & Natural Resources Division
Environmental Enforcement Section
999 18th Street, Suite 370
Denver, Colorado 80202
(303) 844-1381

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, et*
2 *al. v. U.S. Oil & Refining Co.*, subject to the public notice and comment requirements of 28
C.F.R. § 50.7

3
4 FOR PLAINTIFF THE UNITED STATES OF
AMERICA:

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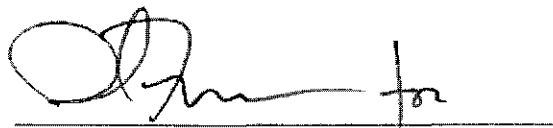
W. BENJAMIN FISHEROW
Deputy Section Chief
Environment and Natural Resources Division
United States Department of Justice

12 | 09 | 10
DATE



DAVID F. ASKMAN
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

12 | 09 | 10
DATE



BRIAN C. KIPNIS
Assistant United States Attorney
Western District of Washington

CONSENT DECREE BETWEEN PLAINTIFF - 72
UNITED STATES OF AMERICA AND
DEFENDANT U.S. OIL & REFINING CO.

United States Department of Justice
Environment & Natural Resources Division
Environmental Enforcement Section
999 18th Street, Suite 370
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(303) 844-1381

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2 *al. v. U.S. Oil & Refining Co.*, subject to the public notice and comment requirements of 28
3 C.F.R. § 50.7

4
5 FOR PLAINTIFF THE UNITED STATES
6 ENVIRONMENTAL PROTECTION AGENCY:

7
8 12.7.10

9 DATE


10 ALLYN L. STERN
11 Regional Counsel
12 U.S. Environmental Protection Agency Region 10
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CONSENT DECREE BETWEEN PLAINTIFF - 73
UNITED STATES OF AMERICA AND
DEFENDANT U.S. OIL & REFINING CO.

United States Department of Justice
Environment & Natural Resources Division
Environmental Enforcement Section
999 18th Street, Suite 370
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(303) 844-1381

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2 *al. v. U.S. Oil & Refining Co.*, subject to the public notice and comment requirements of 28
3 C.F.R. § 50.7
4

5 FOR CO-PLAINTIFF THE PUGET SOUND
6 CLEAN AIR AGENCY:
7

8 12-7-2010
9 DATE

Craig Kenworthy
10 CRAIG KENWORTHY
11 Executive Director
12 Puget Sound Clean Air Agency
13

14
15 12/8/10
16 DATE

Laurie Halvorson
17 LAURIE HALVORSON
18 Director - Compliance and Legal
19 Puget Sound Clean Air Agency
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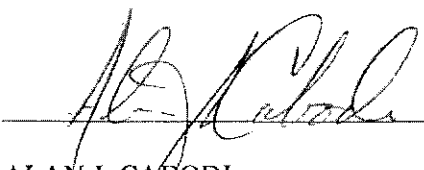
CONSENT DECREE BETWEEN PLAINTIFF - 74
UNITED STATES OF AMERICA AND
DEFENDANT U.S. OIL & REFINING CO.

United States Department of Justice
Environment & Natural Resources Division
Environmental Enforcement Section
999 18th Street, Suite 370
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1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States, et*
2 *al. v. U.S. Oil & Refining Co.*, subject to the public notice and comment requirements of 28
3 C.F.R. § 50.7
4

5 FOR DEFENDANT U.S. OIL & REFINING CO.:
6

7
8 12/8/2010
9 DATE


10 ALAN J. CABODI
11 Vice-President, Manufacturing
12 U.S. Oil & Refining Co.
13 3001 Marshall Ave.
14 Tacoma, WA 98421
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CONSENT DECREE BETWEEN PLAINTIFF - 75
UNITED STATES OF AMERICA AND
DEFENDANT U.S. OIL & REFINING CO.

United States Department of Justice
Environment & Natural Resources Division
Environmental Enforcement Section
999 18th Street, Suite 370
Denver, Colorado 80202
(303) 844-1381

Appendix A – Supplemental Environmental Projects

Projects: U.S. Oil shall spend no less than \$746,000 and complete the following four (4) Supplemental Environmental Projects (SEPs or Projects):

1. Relief Valves to Flare #1

- a. U.S. Oil shall reroute any vapors from atmospheric pressure relief valves currently located on the C-1 (crude prefractionator) and C-7 (naphtha jet splitter) towers to flare #1 by no later than December 31, 2010.
- b. Initiation of the project was necessary to align installation with the turnaround scheduled for September/October 2010. Therefore this SEP began prior to Date of Lodging and U.S. Oil has already incurred expenditures on this SEP which will be credited.

2. MC Loading Rack Mist Eliminator

- a. U.S. Oil shall install a mist eliminator system (and associated support structure) to control asphalt vapors (particulate matter) during loading operations at the MC loading rack no later than 12 months from Date of Entry of the Consent Decree. This system shall be designed to be at least 99% efficient.
- b. U.S. Oil shall operate the system at all times that the loading rack is in use between the date of installation and July 1, 2016.

3. Flux Loading Rack Mist Eliminator

- a. U.S. Oil shall replace the mist eliminator system to control asphalt vapors (particulate matter) during loading operations at the flux loading rack with a system designed to be at least 99% efficient no later than 12 months from Date of Entry of the Consent Decree.
- b. U.S. Oil shall operate the system at all times that the loading rack is in use between the date of installation and July 1, 2016.

CONSENT DECREE BETWEEN PLAINTIFF - 76
UNITED STATES OF AMERICA AND
DEFENDANT U.S. OIL & REFINING CO.

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(303) 844-1381

1 4. Valve Upgrade Project

- 2 a. U.S. Oil shall replace or repack at least 170 valves with live-load or enhanced
3 packing technology by no later than December 31, 2010.
- 4 b. U.S. Oil may replace or repack additional valves with live-load or enhanced packing
5 technology as part of this SEP by no later than June 30, 2013.
- 6 c. Initiation of the project was necessary to align installation with the turnaround
7 scheduled for September/October 2010. Therefore this SEP began prior to Date of
8 Lodging and U.S. Oil has already incurred expenditures on this SEP which will be
9 credited.
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CONSENT DECREE BETWEEN PLAINTIFF - 77
UNITED STATES OF AMERICA AND
DEFENDANT U.S. OIL & REFINING CO.

United States Department of Justice
Environment & Natural Resources Division
Environmental Enforcement Section
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